

450

DISSERTATION

527

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CONCERNING

The Competition for the Crown of SCOTLAND, betwixt Lord *Robert Bruce* and Lord *John Baliol*, in the Year 1291.

WHEREIN IS PROVED,

That by the Laws of God and of Nature, by the Civil and Feudal Laws, and particularly by the fundamental Law and Constitution of SCOTLAND, at that Time, and ever since, the Right of *Robert Bruce* was preferable to that of *John Baliol*:

IN

Answer to the Author of a late Pamphlet, intituled, *The Right of the House of Stewart to the Crown of Scotland considered*; to the Reverend Mr. Logan's two Treatises on Government, and to three anonymous Papers in the *Scots* and *British Magazines*.

WITH AN

APPENDIX

Demonstrating, that the Claim said to have been made to the Crown of SCOTLAND, by *William first Earl of Douglas*, anno 1371, is without Foundation.

By THO. RUDDIMAN, A. M.

Inventus, Chrysippe, tui finitor acervi

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MDCCXLVIII.

DISSEMINATION

GOVERNMENT

The Crown of Scotland
in the year 1801.

The Crown of Scotland
in the year 1801.



The Crown of Scotland
in the year 1801.

WITNESSETH

ATTESTED

The Crown of Scotland
in the year 1801.

WITNESSETH

The Crown of Scotland
in the year 1801.

The Crown of Scotland
in the year 1801.

The Crown of Scotland
in the year 1801.

THE PREFACE.

SOON after I had begun to put the few following Sheets to the Press, my worthy Antagonist, the Reverend Mr. Logan, did first advertise, and, to shew how expeditious he is, within less than a Month thereafter, has set forth another pretty large Piece against me, with this formidable Title, *The finishing Stroke; or Mr. Ruddiman self-condemned, &c.* Had I not tried my Adversary's Strength in a former Adventure betwixt us, such a Title as this was enough to have put a Damp upon my Spirits, and to make me repent that I should ever have entred the Lists with such an awful, and, in his Conceit, Death-dealing Champion. It did indeed at first a little startle and surprise me: But I soon after recovered Courage, having found, that this grand Piece of Ordinance, which this Author has of new planned against me, tho' it has gone off with a thundring Crack and Noise, yet it has done no other Execution, but that it has left a

disagreeable Scent behind it. As I am a Man, and of Course liable to the Frailties I have in common with my other Fellow-mortals, I was somewhat afraid, that in such a Work as this, wherein every Thing I had said in my Answer to this Author, is most narrowly scrutinized and canvassed, he would at least have hit upon some Errors and Mistakes I may have fallen into. But even in *that* I have the Satisfaction of being luckily disappointed. For upon Perusal of that his perplext and irksome Performance, I have not for my Heart been able to discover, that he has in one single Point made his Book answer its vain-glorious Title; or that he has proved so much as one Article of those many grievous Accusations he has laid against me. One Thing indeed he has gained by this his third Labour, (and I know not how many of the same Kind are yet to follow) that he has obliged me to quit the Field; and if he will reckon that a Sign of Victory, I frankly yield to him the Possession of that imaginary Honour; and without any further Disturbance from me,

—*Ille habeat secum, servetque sepulchro.*

It cannot in the mean Time but appear somewhat odd, that as he has ordered Matters, he makes me so stupidly foolish and inconsiderate, as to have contributed to my own Overthrow, and to have fallen not so much

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much by his, as by my own Weapons. But I shall not, I hope, be thought to continue the Dispute, if I enquire a little, whether my Case is really such as he represents it; and whether I deserve to be called a *Proteus* and *Chameleon*, and am guilty of the manifold *Contradictions*, *Inconsistencies*, *Lies* and *Falshoods* he accuses me of. As these are Names and Characters I have hitherto been unaccustomed to, and had no Reason to expect them from one, who, in the Beginning of his *matchless Piece*, professes to treat me *with a Spirit of Meekness, and a sincere Regard to Truth*: It will not therefore be thought amiss, that in this short Preface, I take a cursory View of some few of these groundless Calumnies and pretended Inconsistencies he lays to my Charge: From which (as they are all of the same Sort) the Reader will have no Difficulty to form a Judgment of the rest.

1. Then, that nothing might escape him, he falls foul on the *Picture* or *Frontispiece*, that I have put before my Book; and blames it for not being done *according to the Rules of Art*. But, as I am no *Connoisseur* in these Things, I leave it to the Painter and him to discuss that Matter betwixt them.

2. He next finds Fault with the two *Motto's* in my Title-page: With the first, *Quæ Cæsa-*

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Cæsar *Cæsari*, that it is not in the original *Greek*: As if that were a Matter of mighty Importance! He quarrels the second, 'Εξ δὲ Διὸς Βασιλῆς, that it is taken from an Heathen Author, *Hesiod*, in that idolatrous Book of his called *Theogonia*, or *the Genealogy of the Gods*. He adds besides, that it is not to the Purpose, for supporting the Jure divino-ship of Kings: For in a *Latin* Version of that Author, and that done, forsooth, by a *Milaneze* Nobleman too, Βασιλῆς, says he, is rightly rendered *Poets*, and not *Kings*. I am not acquainted with that Translator: But it is the first Time I ever read or heard, that the Word Βασιλεὺς signified a *Poet*. Kings indeed have been both *Poets* and *Prophets*; for such was the great and pious King *David*: But I always thought, that these Titles and Names, tho' they might happen sometimes to belong to one and the same Person, yet they were quite distinct from one another. He concludes, *That I have found these Words quoted by some inconsiderate Author*. I understand a little *Greek*, and might have got that Citation from *Hesiod* myself. But to be ingenuous, I had it from two Authors, whom none, but Mr. *Logan*, will call either *inconsiderate* or *inconsiderable*. They are Archbishop *Usher* and Sir *George Mackenzie*; the one in his excellent Treatise

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rise intituled, *The Power communicated by God to the Prince, and the Obedience required of the Subject*, p. 42. and the other in his *Jus Regium*, p. 444. and brought by both for the same Purpose, for which I use it. They were both great and eminent Men, and the former, especially, was incontestably one of the most learned as well as pious Persons of his Age. And that he took these Words in the same Sense I do, he shews immediately after, where he observes, that, as *Hesiod* in that Place makes *Jove*, or the supreme God, the procreant, so 14 Lines before this, he makes him the conservant Cause of Kings, by giving them the Title of Διοτρεφεῖς, i. e. *nourished by Jove*. And if that will not suffice, he subjoins a like Passage from *Callimachus*, another ancient Greek Poet, which begins with the very same Words, viz.

Ἐκ δὲ Διὸς Βασιλῆες ἔπει Διὸς ἕθεν ἀνάκτων
Θειότερον τῷ καὶ σφι τὴν ἐκρίναο τάξιν.

Thus translated,

*Kings are from Jove; none so divine as they,
Whom he calls his, and in his Place bids sway.*

Does not this look somewhat like an ascribing a *Jure divino*-ship to Kings?

I come now to glance at some few of these many Inconsistencies, no fewer, as he numbers them, than 21. which he pretends to have found in my Dissertation. And

I. In

1. In his p. 5. he says, "That in my
 " Preface to *Buchanan's Works*, p. 19. I
 " was of Opinion, that the Controversy
 " concerning hereditary Right is so difficult
 " and perplexed, that it is not to be decided
 " by the Pen, but by the Sword. But now,
 " adds he, I have changed my Mind, and
 " think it may be decided by the Pen, and
 " particularly by my own." Very well
 found out! But every Body that has Eyes
 will see, that I am not there speaking of he-
 reditary or any other Right, but of *Bu-*
chanan's Dialogue de jure Regni in gene-
 ral, and of the odd Notions of Government
 he maintains in it; which our Author and
 some others of his Party are so very fond
 of; namely, that the People have the sole
 Power of making and un-making Kings, that
 they can chuse them as they do their Lawiers
 or Physicians, and not only can lay them
 aside, when they are not such as they would
 have them, but also depose and cut them off,
 when they are really, or (which is the same
 Thing) in their Opinion, guilty of Male-ad-
 ministration. This I there call *materia ve-*
xatissima; for notwithstanding the innume-
 rable Volumes wrote for and against that Do-
 ctine, the People will still follow the Swing
 and Bent of their own Inclinations, and
 will not be restrained by any Tongues or
 Pens, but by the Power of him only, *who*
stilleth

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stillleth the raging of the Sea, and the Madness of the People.

2. *Ibid.* he says, that in my Preface, p. 2. I call Buchanan's History the most considerable of all his Works. And does not Buchanan think so of it himself, when he calls his other, *i. e.* poetical Works, *levioris operæ libelli*, or Works of less Moment and Consideration? But, says he, in my Answer to Mr. Benson, I maintain, that his Paraphrase of the Psalms is the most considerable of all his Works. This Author takes Care not to mention the Page where I should have said so, as being conscious there is no such Thing in all that Treatise. In p. indeed 123. in Opposition to Mr. Benson, who is at no small Pains to disparage and run down that Paraphrase, and affirms of it, that of all that Author's poetical Works it deserves the least Applause, I, on the contrary maintain, That in the Judgment of Persons of the most refined Taste in these Matters, Buchanan's Paraphrase is the MOST SHINING and MOST ILLUSTRIOUS of all his Performances. Who is there that does not here discover this Author's gross Prevarication, and deliberate Design to impose upon his Readers; when it is obvious to common Sense, both from the Words themselves, and the whole Paragraph in which they stand, that I could mean no other but Buchanan's poetical Works?

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3. I had said in my Answer, *p. 14.* "That
 " what the Nobility, *&c.* of Scotland wrote
 " to the Pope, that if their King, *Robert*
 " *Bruce*, should subject them, or their
 " Kingdom to the King of England, they
 " would expel him, is no more than what
 " should be said to every the most rightful
 " King, that should subject his and the
 " Kingdom's Independency to a foreign
 " Yoke, that he left off to be their King.
 " as having before degraded and unkinged
 " himself." These Words of mine he re-
 " peats in his *p. 6.* as also, tho' for another as
 " idle Purpose, in *p. 22.* But behold and
 " wonder! In his very next Page, says he,
 " Perhaps there is a Snake in the Grass, and
 " you may think of an Evasion in these
 " Words, *It may be said, &c.* But yet it
 " ought not to be done: Is this to be con-
 " sistent? But, Sir, to what Purpose say it,
 " if it may not also be done? May not
 " a glorious Resolution, as you call it (*a*),
 " be put in Execution?" But, good Sir,
 " are not my Words, as you before had set
 " them down, SHOULD BE SAID, and not as
 " you now make them, IT MAY BE SAID? And
 " are not these the same with *it ought to be*
 " *said.* And if *it should or ought to be*
 " *said,*

(*a*) I do not call what is in that Place said by our
 " Nobles, *glorious*: The *glorious Resolution* I speak of is, in
 " what they afterwards add, *That so long as an hundred of*
 " *them were alive, they would never be subject to the King*
 " *of England.*

said, what should hinder that it should not, in the supposed Case, *also be done*? What can any Man think of this, but that this Author, notwithstanding his fair Professions to the contrary, has paid but small Regard to Truth, or, to speak more moderately of him, that his Memory is somewhat shattered, and I wish his other Faculties are not also affected? And to shew this, we need only to mention his following Words, in which he seems so secure of holding me hard and fast in his Clutches, that he adds, *After this grand Concession, whereby you (i. e. I) give up the Cause, there is no more Necessity of arguing with you.*

4. In his *p. 9.* he says, "That I in my
" *p. 64, 65.* maintain the slavish Doctrine
" of the *Non-resistance* of Kings, and yet
" approve of the Resolution of the Nobles,
" that if *Robert Bruce* should subject them
" and the Kingdom to the King of *England*,
" they would use their utmost Endeavours
" to expel him." I do not remember that in all my Dissertation I make the least Mention of that Doctrine of *Non-resistance*: I am sure not in my *p. 64* or *65.* But be that Doctrine never so slavish or unnatural, (as our Author and his Party commonly rate it) I have shewed both in my Answer, *p. 14.* and in the following Dissertation, *p. 92.* that there is no Inconsistency betwixt it and what is said in that Letter of our Nobility to the
b 2 Pope.

Pope. But our Author has here over-acted the Point, when in this same Paragraph he adds, *That this Doctrine of Non-resistance is necessarily connected with absolute hereditary indefeasible Right.* For if that is true, then the whole Christian World, down to Pope *Hildebrand*, and the greater, I am sure the better, Part of it ever since, taught and maintained that same Doctrine; and if it has a necessary Connection with absolute hereditary indefeasible Right, then it will follow from his way of reasoning, that they also believed that the Rights of Kings were *absolute, hereditary and indefeasible.*

These are the first four (as they ly in Order) of the Inconsistencies I am charged with: To which I shall only add two more, because of the surprizing Singularity of them. They are the eleventh and twelfth, but I shall call them the fifth and sixth.

5. In his *p. 15.* “You maintain, *says he,*
 “in *p. 8.* that the Rule of Succession in so-
 “vereign Kingdoms is fixt, regular and u-
 “niform: But in *p. 9.* and *10.* you menti-
 “on no less than four Instances of sovereign
 “Dominions, in which there is no Unifor-
 “mity, but Variety and Difference, &c.”
 What egregious Sophistry is this? Because I say, that the Rule of Succession is vari-
 ous in various Kingdoms, does it therefore
 follow, that none of these Kingdoms have a
 fixt,

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fixt, regular and uniform Rule of its own, and for and within itself? Because *France* has one Rule, *Spain* a second, and *Poland* a third, are therefore the Rules of Succession in these Kingdoms all loose, vague and uncertain? Or in other Words, because Mr. *Logan* and I differ much in our Principles, does it therefore follow, that neither of us have any thing like fixt Principles at all?

6. In his *p. 16.* "You maintain, says he, in your Answer. *p. 41, 42.* That our Kings did by a natural hereditary Right succeed directly and immediately, in a lineal Order, one after another. But this General, adds he, you retract in your *Corrigenda*, where you desire this Assertion may be understood of our latter Kings." Is this a casual Blunder, or a deliberate Falshood? The Correction he refers to is that in *p. 42. l. 2.* where I desire that instead of *our Histories*, may be read *our later Histories*. He, with a Design, it seems, to impose upon the World, turns *later* into *latter*, and instead of *Histories* substitutes *Kings*. And to crown all, he repeats it again, *p. 20.* and to increase his Number makes a new Article of it.

After this Specimen I have given of our Author's most unjustifiable Method of treating me, my Readers will be apt to think they have enough of him, and that there is no Need of proceeding with him any further. There is only one Thing yet remaining, which,

which, as it is of a quite different Nature from all the rest, my Readers will forgive me that I take some short Notice of it.

It is this. The Reverend Author I have to do with, notwithstanding all his pretended *Meekness* and *sincere Regard to Truth*, is not ashamed, at every other Turn, to leave his Argument, and to represent what I formerly wrote, as contrary to the present Establishment. This is to call in the *brachium seculare* upon me, and to set the Government with a Vengeance about my Ears. Only he is so good, as in *p. 56.* to assure me, that the Lowness of my Condition will save me from its Resentment. And what Ground has this Author for all this? No other but because I maintain, that the Crown of *Scotland* was, and still is, by its Constitution, hereditary and not elective, and that the Title of his present Majesty, and of his Posterity to the *British* Throne, is founded upon that Principle. For this I need only refer the Reader to what I have said in *p. 347.* of my Answer, and which, if considered impartially, is sufficient to vindicate me from all the wicked and malicious Cavils and Calumnies that this Author has so often thrown out against me.

I pass over two more of his false Assertions, in *p. 53* and *54.* wherein he says, that he heard that I attended the Levees of the Enemies of the Government at the *Abbey*; and that he knew that I got a good
Sum

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Sum from the Friends of it. By the former he means the young Chevalier: But I here declare, that I never saw that young Gentleman but once, and that not above two Minutes. As to the other, I would be obliged to this Author, if he will let me know who these Friends of the Government are, from whom I received one Farthing of Money, but what I wrought for, and which was no more than proportionate to the Service I did them.

I have now done with this Author, and shall only take my last Farewell of him with a little Formality. In his Postscript, after repeating the Title I give to this my Dissertation, he, by way of Irony, calls it a *very modest Undertaking*, and concludes with that trite, childish Proverb, *No Hercules contra duos*. Whether my Dissertation will answer its Title, must be left to the Judgment of the impartial Reader. But who these two Opponents he speaks of, are, I know not, unless they are himself, and the Author of the Pamphlet he is so much taken with. This however I will venture to say, that it does not require a Person of great Abilities, far less a *Hercules*, to stand his Ground against such Adversaries as these. Of the XII. Labours ascribed to that ancient Hero and Demigod, there is indeed one that bears a near Resemblance to that which our Author would put me upon, *viz.* the purging of the Fold of a King called *Augeas*, in which 3000 Oxen had

had been stabled for 30 Years. This was a Task that none but a *Hercules* was able to undertake; and even he had no other Way of performing it, but by bringing in the River *Alpheus* upon it, and by that Means carrying off that vast Heap of Nastiness. But I must be excused not to follow *Hercules* in this: For who would undergo the Drudgery of wading through that Mass of Scurrilities, Absurdities, Falshoods, Inconsistencies, Jargon and Nonsense, which this third Performance of his is especially stuff with, from the one End to the other? This only I think I may add, that whoever would engage in such a Task, must use a contrary Element to that employed by *Hercules*, there being no other Way of dealing with it, but by that fiery Method of Purification. But of this too much, I shall therefore take Leave of my Antagonist for good and all, with the Saying of his great Favourite *Buchanan*, who when engaged in a Dispute of this Kind with some scurrilous *English* Writers, who had thrown out Reproaches against our King *James I.* as our Author does upon some of the best of his Posterity, concludes with these Words, *Sed omissis hominibus alienae famae calumniatoribus, & suae tam negligentibus, ut nihil pensi habeant, quid vel ipsi de aliis dicant, vel alii de ipsis sentiant, ad rem veniamus.* i. e. after his Example, I will betake myself to other Business more suitable to one of my Years and Inclinations.



A DISSERTATION, &c.

ALTHO' in my Answer to the Reverend Mr. Logan, I persuaded myself, that, to the Conviction of all the unbiassed Part of my Readers, I had so fully established the Truth of the Principle I was by that Author called upon to defend, viz. *That the Crown and Monarchy of Scotland, by its original Frame and Constitution, always was, and still is, hereditary, and not elective*; that nothing more was necessary for determining that Point: Yet I was not so vain, as to hope that he and others, who, for Ends of their own, have taken up a contrary Opinion, would suffer the Matter to rest upon what I had said on that Head. I was better acquainted with the World, than to expect, that I should have a more favourable Luck, than many others who have been engaged in such like Controversies before me; Experience having taught me, that when once Men have taken up an Opinion, tho' never so unjustifiable and ill founded; yet such is the Prevalence of Self-love, Interest and Prejudice, that nothing can induce them to quit their Hold, and yield to a Truth, be it ever so clearly manifested to them. This has in a particular Manner been my Fate. For, besides what I am to expect from my principal Antagonist, who I am assured is busily employed about giving me a Reply, I have been very lately attacked by three other different Hands, who have espoused, and in four several Papers, (two in the *Scots*, and other two in [what is here called] the *British Magazines*) endeavour to support Mr. Logan's Quarrel.

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Being

Being however secure of the Justice of my Cause, and that, tho' the Truth may lose something of its native Beauty and Lustre, either by the Weakness of its Defenders, or by the Shufflings and Disguises of its Opponents; yet it continues immutably the same, and can never be finally overpowered and defeated; I was once resolved to let the Matter rest upon what I have already written on the Subject, and not to dip in the Controversy any more. And that I have now altered that my Resolution, and prevailed with myself to enter the Lists with these my new Adversaries, proceeded not from any Necessity of the thing, but from the following Motives and Considerations. The first whereof is, that I might take Occasion to lay before my Readers some other Topicks I had not formerly touched on, which yet are of no small Moment for confirming the Argument I maintain. The second is, to rescue and vindicate what I have said, from the many idle Cavils and false Glosses, which these my Adversaries, especially the last of them, have put upon my Words. But my last and chief Inducement was, that (as I had done in my Answer) I might rectify some other material Points, in the Transactions of our Kingdom, which have been grossly misrepresented by the Negligence or Ignorance of some, and the Partiality of others of our later Historians.

These are the Reasons I had for this my second Undertaking: But before I proceed, I must, in the first Place, take Notice, that of the many Examples brought by the Reverend Mr. Logan, by which he would prove, that the Right to the Crown of *Scotland* did not always descend by hereditary Succession, but that it was sometimes, nay, according to him, very often, transmitted to others than the true Heirs, by the Election and free Suffrages of the People; my later Antagonists have pitched only on that by which our *Robert I.* came to the Crown, as conscious (it would seem) that those other Instances brought by the above named Author, would not stand the Test. And here it may appear pretty odd, that those Persons, who are so fond of popular Government, should, after they have ransacked our Histories, and tortured them all

all they could, to bring them to answer their Purpose, can yet find only one Example, in which their elective Scheme took Place. And would not one expect, that an Example of such a singular and unprecedented Nature, and upon which so great Weight is laid, should itself be put beyond all Dispute? This indeed all my Opponents have been at great Pains to make out: But how well they have succeeded, is what I am now to take under Consideration. And because the Author of the two last Papers has laboured the Point more fully than any of the rest, I shall confine myself chiefly to what is advanced by him to overthrow *Robert Bruce's* Right, and to prove, that it was merely by the Election of the People that that Prince came to the Throne.

SECT. I.

TO begin then with that Author (whom, because he intitles his Paper, *A Review of the Dispute, &c.* I shall henceforth call the *Reviewer*,) He, after giving us the State of the Controversy, which being so well known, is needless to be repeated, proceeds to tell us, wherein the Author of the Pamphlet intitled, *The Right of the House of Stewart considered* (whom I take to be his own dear self) disagrees with me as to the Person to whom the Right in that Controversy belonged. "The Author of that Pamphlet: (*says he*) affirms, that the Decision of *Edward King of England*, to whom the Matter had been referred, which gave it in favours of *John Balliol*, was right, and on the other Hand, *Mr. Rudiman* says it was wrong, and that he ought to have decided in favours of *Robert Bruce*." And here the Reviewer could not forbear giving us a little Touch of his Art at his very first Outsetting. He tells us, that *Edward's* Decision was right, because it was in just Agreement with the Custom of Scotland in other Heritages: But he does not give us the Reason why *Mr. Rudiman* thought otherwise, but simply that he says it was wrong. However, to pass this, because he will say that he reserved my Reasons to be discussed afterwards, let us

go on with what immediately follows in this Author's *Review*, in which he shews the most unfair and deceitful Management that ever was used in any Cause. This may seem a hard Saying; and therefore to make it appear, I must set down his own Words.

"I come now, says he, to consider the Arguments used on both Sides, [as if he had not told us already the only Argument insisted on in favour of John Baliol;] but previously to that, I must observe, that the two first Inferences Mr. *Ruddiman* draws from the History and State of the Case, tend to shew, that the Competition having been from the Right of Blood, the Kingdom of *Scotland* was not elective, but hereditary, which, to be sure, in the ordinary Course it was; And as the Author of the Pamphlet has not said otherwise, tho' he denies the indefeafible and divine Right, it is none of my Business to take further Notice of that Point. I do not at all enter into the Dispute betwixt the Reverend Mr. *Logan* and Mr. *Ruddiman*, nor have I considered it farther than as it relates to the Pamphlet abovementioned, wherein the Author makes the following Observations:—"

These Observations are too curious and singular to be neglected, and therefore shall have all due Care taken of them afterwards; but to return to my Inference, which, tho' it is that which I lay very great Stress upon, yet it is but one, and not two: And is it not a fine Way of eluding the Force of it, thus to shut it over, and decline the returning any Answer to it. He tells us "it was none of his Business to take any further Notice of that Point, than barely to mention it: adding, "That he did not at all enter into the Dispute between the Reverend Mr. *Logan* and Mr. *Ruddiman*, nor had he considered it farther than as it relates to the Pamphlet abovementioned." What? does not Mr. *Logan* adopt, and follow forth the same Argument that Author makes Use of for proving, that *Robert I.* came to the Crown, not by Right, but by the Election of the People. But, how will that overturn my Inference? For, if, as all are agreed, the Point of Right was the sole

Sole and only Hinge upon which that Controversy turned; and according to which it was, tho' in a different Manner, determined; where is there the smallest Shadow for a Pretence, that Election had any thing to do in the Case? 'Tis true, King *Edward* of *England* gave it one Way, and the States and People of *Scotland* another; and 'tis no less certain, that either he or they pronounced a wrong Sentence: But which of them were in the right, or in the wrong, we shall at present leave *sub judice*. This, in the mean Time, must be granted, and I shall afterwards demonstrate it to be true, that neither the one nor the other did so much as dream, that the Matter should or ought to go by Election. For King *Edward* could not be more peremptory in his Decision that the Right was in the *Baliol*, than the States and People of *Scotland* were in theirs, that it was in the *Bruce*.

But to give the Reviewer, and these my other Opponents, as large a Scope as they can desire, let it be supposed, that the States of *Scotland* were in the wrong, in determining the Right to belong to *Robert Bruce*, which yet they do affirm in the strongest Terms that can be devised; and hope my Opponents will not (I am sure they ought not to) refuse the same to be supposed, with respect to King *Edward's* Decision in favours of *Jahn Baliol*: What, pray, would thence follow, but that (as the Suppositions are perfectly equal on both Sides) either they or he were in a Mistake as to the Point of Right, and not that either they or he ever designed, or even thought they had it in their Power, to give the Kingdom by Election to whom they pleased? In Competitions of all Kinds, which, like this, turn upon the Point of Right, it can hardly fail, but that not only the contending Parties, but these also to whom the Determination belongs, will frequently be divided in their Opinions. But will it thence follow, that they who happen to be mistaken, and to pass a wrong Judgment in the Cause, did therefore imagine, that the Point of Right was no Part of the Question; and that, because the Matter was quisquous and disputable, (tho' it was much less so in that Case then, than now) they might without any Consideration
of

of Right or Wrong, give Sentence in favours of one or other of the Competitors, as Friendship or Inclination should lead them? I might illustrate this by innumerable Examples, in Causes that come before Courts of Justice, in which what is decreed in one Court is frequently reversed by another. But who will be so absurd as to say, that the Judges in these Courts, who are sworn to do Justice, and must answer to God for it, if they knowingly do otherwise, may yet act arbitrarily, and without regarding whether their Sentences are just or not? It is a Maxim in the Civil, and I suppose, in all Laws, that *Prætor jus dicit, etiamsi injustè dixerit*: And, as every *Prætor* or Judge is supposed to design Justice, so if his Decision is final, tho' he should happen to be mistaken, (and what Judge is there that is infallibly certain, that he was never in the wrong?) yet his Sentence must be the Rule. Just so, as the States and People of Scotland do, in the most solemn Manner, declare, that they owned and recognized *Robert Bruce* to be their lawful Lord and King, because he, and he only, had the justest Title by hereditary Right to be so; tho' we should suppose that their Judgment in this was erroneous; yet we cannot but conclude, that they intended nothing but Justice, and that, as in one of their parliamentary Deeds they swear (as we shall shew afterwards) to the Truth of what they assert, they would have done Violence to their own Consciences, if they had acted otherwise than they did.

I have dwelt longer on this, that I might render the Matter clear and evident to the most dull and sluggish Reader, if he can think justly of any thing at all, that, as all Parties professedly and avowedly went upon the Point of Right only, there was not, nor could be, any Pretence for Election in that grand Controversy. The plain Consequence of which is, that the Inference I make is firm and invincible, and that tho' these Authors should prove never so clearly, that *John Balliol* had the Right; yet if they cannot also prove, that the States and People of Scotland were of the same Judgment and Opinion, which they in most express Terms deny, and I shall afterwards

terwards bid fair to shew they had Reason for so doing, on their Side; then all these Authors Labours are lost, and their fine elective Scheme, as having no Prop to support it, must, in spite of Fate, and their best Endeavours, inevitably totter and fall to the Ground.

Nevertheless, tho' what I have said is of itself sufficient for my Purpose, and renders all farther Disquisitions upon the Head vain and superfluous; yet, because those Authors keep up such a Parade upon the supposititious better Right of *John Baliol*, and wire-draw so many Consequences from it, for upholding that their darling elective Scheme, I shall proceed next to consider the Grounds they here go upon; and, because they ly first in order, I shall begin with examining the Justness of the Observations, which the Reviewer makes on the aforesaid Supposition; which are these:

1st, "That, considering the Crown of *Scotland* as Heritage, *John Baliol* had the Right of Succession to it as nearest Heir.

"2^{dly}, That, according to the Doctrine of divine, hereditary, indefeasible Right, his Son *Edward* ought to have succeeded him.

"3^{dly}, That therefore the Reign of *Robert Bruce*, (Grandson of the first *Robert*, who was Competitor with *Baliol*) was an Usurpation, and he himself, his Son *David*, and all his Descendents, Usurpers. Whence

"Lastly, He concludes, either that the Family of *Stewart* did at first usurp the Crown of *Scotland*, and must be supposed to have continued to do so till the contrary is proved; or that they mounted the Throne, and swayed the Sceptre to the last, on Principles plainly revolutionary, the Consent of a free People, and the Authority of Parliament."

Here we have a long Train of Argumentation; the Logicians call it a *Sorites*, and the Lawyers (a) *sylogismum acervalem*; which *Cicero*, *Seneca*, and others who write of it, observe to be the most captious and fallacious of all kind of reasoning. It is a long Syllogism, consisting

(a) L. 177. de verb. signif. & L. 65. de divers. reg. jur.

ing of divers smaller ones chained together, whereby one is gradually led from a Proposition, really or seemingly true, to a Conclusion absolutely false (a). The trite Example that is given of it, is, *He that eats well, drinks well; he that drinks well, sleeps well; he that sleeps well, has no ill Thoughts; he that has no ill Thoughts, is a happy Man: Therefore he that eats well, is a happy Man.* Of the same Nature and Quality is the Conclusion this Author draws for his elective Scheme, from what he calls the Pamphlet-writers four Observations; as will obviously appear when we take his long Syllogism to Pieces, and consider every Article of it separately. And in doing this, I shall shew that they are so far from containing a fair and just Chain of reasoning, that there is not one of them that hath a true Connexion with that which went before. For,

1st, Suppose his first Observation should be granted, that *John Balliol* had once a Right to the Succession, as nearest Heir; yet (not to speak that the States and People of *Scotland* were persuaded of the contrary) he had, several Years before *Robert I.* mounted the Throne, not only abdicated the Government, but resigned and given up all Title and Right he had to it, in the Hands of the King of *England*. *Robert I.* therefore could do him no Injury in taking up that which he had laid down; or (which is the same) had given away from him. For, I hope, it will not be controverted, that when two or more are instituted Heirs to an Estate, if the first shall not accept it, or afterwards renounce all Title to it, the second may lawfully enter upon Possession. *Robert Bruce* was, if not the first, incontestably the second Heir to the Crown; and what should hinder him, after *John Balliol* had abandoned it, to claim it as now having become his just Property?

2^{dly},

(a) It was much used by the *Stoick* Philosophers; and because it was carried beyond all Bounds, *Chrysippus* wrote a Book for fixing the Limits within which it ought to be confined. Hence that of *Persius*, *Inventus, Chrysippe, tui finitor acervi.* *Horace*, in that otherwise noble Poem to *Augustus*, *Epist. II. 1.* makes Use of a very deceitful *Sorites*, ver. 45. &c.

2dly, Neither is that Author's next Observation better founded, viz. That, according to the Doctrine of divine, hereditary, indefeasible Right, Edward, the Son of John Baliol, ought to have succeeded. For 1st, If the Abdication or Resignation of the Father did include that of the Son, then Edward Baliol was divested of the Crown by that his Father John Baliol's Deed. This is certain, that in the Succession to private Estates (which our Authors will have to be the Rule in the Succession to a Crown) the Resignation or Alienation of them to others than the next Heir, will effectually cut off all Pretensions these Heirs could make to them. Whether this will hold with respect to the Heirs of a Kingdom is indeed by many controverted, but never, that I could learn, by the strenuous Defenders of the late Revolution. But 2dly, As this Edward Baliol did never otherwise claim Right to the Crown of Scotland, but as a Fee-licge of the Crown of England, he thereby destroyed his own Title, tho' it had been otherwise just and good. I hope there is no true-hearted Scotsman, who will not maintain, that the Crown of Scotland then and always was imperial, sovereign and independent; and that consequently the King, who subjected himself and it to another, did upon the Matter un-king himself, and forfeit all Right that he otherwise might have pretended to have to the Sovereignty. But this is not all; for 3dly, This same Edward (in Imitation of his Father, who had resigned whatever Right he had to the Crown, to Edward I. of England) did likewise resign his Title to it in the Hands of Edward III. This then being the Case, it is plain, that whatever Right either of the Baliols might otherwise pretend to the Scottish Crown, it was now as effectually extinguished, as if they never had existed; unless our Author will be so absurd as to say, that one still retains a Right to that which he has freely and voluntarily given away.

3dly, What I have said, does evidently serve to overthrow the third and fourth Observations this Author makes for supporting his fictitious Scheme. For if the two Baliols either never had, or, which is sufficient for my Pur-

pose, if they did absolutely and intirely give up and relinquish what Right they might pretend to have to the Crown of *Scotland*, then it is as clear as meridian Light can make it, that the Reigns of *Robert* and *David Bruces*, and of the Family of *Stewart*, who derived Right from them, were no Usurpations, but as true and lawful an hereditary Succession, as ever obtained in any Kingdom, *Robert Bruce*, and consequently his Descendents, made up, if not the first, yet, at least, unquestionably the second Branch of the Royal Family. And if the two *Baliols*, who pretended to make up the first Branch, did, for themselves and their Heirs, surrender and give up all Title and Claim that they formerly thought they had to it, what remained that could put a Bar to the Right of the other Branch, who now had no Rivals to contend with? If there was any Usurpation in the Case, it was upon the Rights of the Kings of *England*, to whom the *Baliols* had resigned theirs. But, tho' Kings may abdicate the Throne, (for no Man can be obliged to be a King whether he will or not) yet our Author will not allow, that he has a Power to alienate his Right to another, or to chuse at Pleasure who shall be his Successor. If then the Deeds of the two *Baliols* could give no lawful Right to the Kings of *England* over a sovereign and independent Kingdom, as ours then was, and always had been; it necessarily follows, that none of the *Brucean* or *Stewartine* Line can be called Usurpers, since there were none other but they that could lay a just Claim to the Crown: These of the *Baliol*-Family having given up their Title, and it being incompatible with the Sovereignty of the Kingdom, that a foreign Prince could acquire a Right to it. But,

4thly, I add further, with respect to the Family of *Stewart*, that tho' we should suppose, that the Reigns of *Robert* and *David Bruces* were Usurpations on the Rights of one or other of the *Baliols*, yet that of the *Stewart*-Family was not. For, not to mention the Abdications or Resignations of both the *Baliols*, they were both dead before that Family came to the Crown, without leaving any Issue behind them. 'Tis true, *John Baliol* had a Si-

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ter Marjory, who was married to John Cumin Lord of Badenoch, Father of him who was slain by Robert Bruce anno 1306. But as neither she, nor any descended of her, laid any Claim to the Crown, (for that which is commonly said to have been given in to it, by William Earl of Douglas, as descended of that Marjory Baliol, I shall afterwards demonstrate to be a pure Fiction;) there remained nothing that could stand in Bar to the hereditary Right to the House of Stewart. It is a standing Maxim in Law, that Possession gives Right, when none other can shew a better Right. And this holds more strongly here, when none of the Race of the Baliols, from the first Accession of that of the Stewarts, to this Day, have ever laid any Claim to the Crown at all, There is likewise another Maxim in Law, that *in pari casu possidentis melior conditio*, which at least was the Case at that Time, between the Representatives of Bruce and Baliol: And as the former had the Judgment of the whole Nation on their Side, they were at least *bonæ fidei possessores*, and not Usurpers on the Right of others, at least till these others should shew that they had a better Title, which to this Day they have never had the Confidence to do.

S E C T. II.

HAVING thus gone through the Pamphlet-writer's *Sarites*, and shewed that these his four Observations, of which it is composed, are so far from being according to the Rules of just Reasoning, that they are nothing but a Rope of Sand, his three last Propositions having no logical Connection with the first, or with one another, I return back to that his first Observation, in which his main Strength lyes, and which (as it is the Basis whereupon the whole Fabrick of that Author's elective Scheme is built) one might expect, that it at least should stand firm as a Rock, impregnable to all the Storms or Batteries that can be raised against it. The Reviewer indeed has left no Means unessayed to support it; but how weak all his Reasoning on that Subject is, as it was

one of the chief Designs I proposed to myself to make out, so the Reader will forgive me, that it has carried this Dispute betwixt us to a greater Length than was to be wished, or was otherwise necessary.

To come then directly to the Point, the first and fundamental Proposition (*Observation* he calls it) of that Author is, That, in that famous Competition for the Crown of *Scotland*, *John Baliol* (and not *Robert Bruce*) had the Right of Succession to it as nearest Heir. To illustrate this, says he, the Pamphlet-writer, (whom, as I said, I suppose to be himself,) lays down the three following Propositions; which I shall consider in their Order.

“ 1st, That he takes it for granted, the Crown was as
 “ much a Man’s Property as his Estate, and that there-
 “ fore it must descend in Succession like his Estate:
 “ And this he apprehends the *Jacobites* will not pre-
 “ tend to deny: And he quotes Mr. *Ruddiman*’s own
 “ Authority for it, in his Notes on *Buchanan*, p. 432.
 “ where he says, *Regnum Scoticum non ex ordinum sus-*
 “ *fragiis pendeat*: [he should have said to make it
 “ Grammar, as I have it, *Cum enim regnum Scoticum,*
 “ *&c.*] *sed jure sanguinis hereditario in genere proxi-*
 “ *mos continuè descendat; eodem jure quo filii in paren-*
 “ *tum defunctorum bona & possessiones dominium [pro-*
 “ *tinus] acquirere solent.*

“ 2^{dly}, That by the Laws and Customs of *Scotland*,
 “ at the Era referred to, Heritage unentailed descend-
 “ ed to the Heirs of an elder Daughter, exclusive of
 “ those of a younger, in the same Way as it does now.
 “ For the Proof of this, he refers to the Act of Settle-
 “ ment in favour of *Robert Bruce*, which, he says, pro-
 “ ceeds directly upon the Supposition of what is here
 “ asserted, *Anderson’s Appendix*, No. 25. *ad finem*. He also
 “ appeals to the Arguments used by *Bruce* himself, be-
 “ fore King *Edward*, wherein he expressly allows it to
 “ be so. And if none of these will satisfy, as it is un-
 “ deniable that the Rule of Succession is so at present,
 “ he desires any Person who denies it to have been so
 “ at

“ at that Time, to point out the Time at which the
 “ Change happened. And,

“ 3dly, He takes it for granted, that the Crown of
 “ Scotland, in *Baliol's* Days, was an unentailed Estate,
 “ and (to speak in the Stile of Lawyers) descended to
 “ *Heirs whatsoever.*”

These are the great Pillars that Author has reared up,
 to support the mighty Superstructure he has laid upon
 them: But how able they are to bear such a Weight, is
 what we are next to enquire into.

1. As to the *first* then, it is much in that Author
 that he acknowledges, that the Crown is as much a
 Man's Property as his Estate. If so, there can be no
 Doubt, but that naturally both should go to the Posses-
 sor's next Heirs, and that no Deed of others, who are
 not superior to them, can put a Bar to their Succession.
 This the *Jacobites* are so far from denying, that it is
 upon that Principle that they deny the Legality of the
 Alteration made at the late Revolution. But the Subsum-
 ption that Gentleman thence makes, *viz.* that the Succef-
 sion to a Crown, and that to an Estate should descend
 in like Manner, and according to the same precise
 Rules, is what will never be granted him. And the
 Quotation he brings from that Note of mine on *Bucha-*
nan, is so far from proving it to have been my Opinion,
 that nothing, as I shall shew afterwards, was more re-
 mote from my Thoughts.

2. His second Proposition is what no Body denies him,
viz. That, at the *Æra* referred to, private Heritages un-
 entailed, descended in the Manner he speaks of: This
Robert Bruce the Competitor owned in his Petition, and
 his Grandson in the Act of Settlement, *anno* 1318, does
 the same, and I have nowhere said otherwise. But then
 both the Pamphlet-writer, and (whom I take to be the
 same) the *Reviewer*, purposely, I believe, as making
 strongly against them, omit to add, that both the *Bruces*
 absolutely deny, that the Custom of Succession in pri-
 vate Estates was to be a Rule to that of a Crown. The
 Words of the Act of Settlement, mentioned by these
 Authors,

Authors, are so express in the Matter, that I shall here insert them.

Præterea, cùm aliquibus præteritis temporibus, à quibusdam, licet minùs sufficienter, in dubium fuisset revocatum, quo jure successio in regno Scotiae, si clara forsitan non extiterit, decidi deberet, ac terminari; in eodem parlamento per Clerum & Populum declaratum extitit ac diffinitum, quòd per consuetudinem in inferioribus feodis seu hereditatibus in regno observatam, cùm in successione regni aliqua talis consuetudo hætenus non fuit introducta, minimè debuit, seu in futurum debeat dicta successio terminari: sed quòd proximior masculus tempore mortis Regis, ex linea recta descendente, vel, masculino deficiente, proximior femella ex eadem linea, vel illà lineà penitus deficiente proximior masculus ex linea collateralis, attento jure sanguinis quo ipsi Regi defuncto jus regnandi competeat, Regi, de cujus successione agi forsitan contigerit, sine contradictione seu impedimento quocunque, in regno debeat succedere: quòd juri Imperiali satis consonum esse censetur.

Ad præmissa verb omnia & singula fideliter, sine dolo, fraude aut fictione, seu malo ingenio, futuris temporibus observanda, Episcopi, Abbates, Priores, & ceteri de Clero, in forma jurandi eis a jure statuta, necnon Comites, Barones, Milites & Libere tenentes, & ceteri de communitate, tactis sacrosanctis Dei evangeliiis, & Sanctorum reliquiis, magnum sacramentum præstiterunt, Et in testimonium præmissorum sigilla sua huic scripto apposuerunt. And accordingly, to this most solemn Deed, the Original of which is yet extant in the publick Records, are appended the Seals of no fewer than eleven Bishops, of nine Abbots, and of ten of the chief Nobility, Barons, &c. And, as Mr. Anderson adds, *cum multis alijs sigillis, ita temporis injurià fractis, labefactatis, & execis, ut dignosci minimè queant.*

Here we have, in most express Terms, declared what was the *lex regni*, or the Rule of Succession, on which Robert I.'s Right was founded: And to give it an invincible Force; they not only put their Seals to it, but, to testify that it was the real Sentiment of their Minds, they

they confirm it with a most solemn Oath, sworn by *touching the holy Gospels, and the Reliques of the Saints*, which was then thought the strongest Tye by which the Consciences of Men could be bound. What a Height of Presumption must it then be for any now, at the Distance of upwards of 400 Years, to pretend to know what was the Rule of Succession to the Crown of *Scotland*, better than (I may say) the whole Community of the Kingdom did at the Time when that Controversy happened? The dissembling of all this is another Swatch of the fair Dealing we are to expect from such Writers as these.

3. But let us next see how that Author's third Proposition will agree with the above Act of Parliament: And here that Author is so bold as to say, "He takes it for granted, that the Crown of *Scotland*, in *Baliol's* Days, was an unentailed Estate, and (to speak in the Stile of Lawyers) descended to *Heirs whatsoever*." But what a shameful begging of the Question is this? He takes for granted that, which every Body that knows the Nature of hereditary Government, knows to be an absolute Falshood: For how can a Crown, that by the very Settlement of it, descends to the next Heirs by a certain fixt, uniform Rule, (whatever that Rule is) and which it is not in the Power of the present, or any after Possessor, to alter or abrogate, be said to be unentailed? I will not say that it is entailed the same Way that private Estates are, but that does not hinder it from being as strictly entailed, if not much more, than any private Estate is, or can be. For let the Power of him that possesses the Throne be never so great, yet he has no more but a Liferent-right to it, and can no more prejudice the Right of him, who, by the Constitution, is next Heir, than if he had never possess it. Whereas, on the contrary, if it were unentailed, it would cease to be hereditary, and could be disposed of by the Owner at his Pleasure, which is thought to be the Rule in the Crown of *Russia*. where the Emperor is allowed by Testament to name his Successor, without regarding any who are his nearest Heirs, as was done by the late
Czar,

Czar, Peter the Great, and has been done by others who have since succeeded him. Nay, even an Estate unentailed, *i. e.* where the Possessor dies *intestate*, tho' it descends to *Heirs whatsoever*, may yet be said to descend according to his Will and Pleasure, it being presumed from his Silence, that his Will was, that the Estate should go as the Laws of the Land had provided in the like Cases. But it is far otherwise in most Kingdoms, whether elective or hereditary, where not the King's Will, but the Constitution, is the only Rule of Succession.

S E C T. III.

I Should now proceed to answer the Objections that are raised by the *Reviewer* against what I have said in Defence of *Robert Bruce* the Competitor's Right to the Crown, as preferable to that of *John Baliol*. But, before I come to the Particulars, both to shorten the Dispute as far as possible, and that I may not be obliged to follow that Author through all the Turnings and Windings, with which he hath perplexed the Matter, I shall premise some Things concerning the general Ground, upon which all these his Objections are founded, and that is the Title which one hath to succeed another, by what is called THE RIGHT OF REPRESENTATION. And here, as to this, our Author falls into three great Mistakes. 1st, That he fancies this *Right of Representation* to be a fixt general Law, which had always and every where obtained in the World to this Day, 2^{dly}, That the Person representing was intitled to all the Privileges and Prerogatives of the Person represented. And 3^{dly}, That it had the same Effect, and was of the same Extent in the collateral Line of Consanguinity, as in the direct Line descendent.

I. As to *first* of these, I must inform our Author, that what we call REPRESENTATION was a Thing utterly unknown for some thousands of Years in the World; and in a great many Places, and probably among the greater Number of Nations, is not received to this Day.

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This is acknowledged by the most learned Lawyers and others, who have wrote on the Subject; who assure us, that Proximity of Blood was the only Rule by which not only moveable, but immoveable Goods and Possessions were transmitted from the Dead to the Living in those Times. This was the Rule (as I shall shew afterwards) that was established by Almighty God himself, among his own peculiar People the *Israelites*. *Tacitus* informs us, that the same Rule was observed among the ancient *Germans* (a). And it appears from the Laws of the *Wisigoths*, published by *Lindenbrugh* (b), that the same Custom was received among them. The Right of Representation did not take place in the *German Empire* till the Time of *Otho I.* anno 942; but that in after Ages was quite abolished, till it was re-established by *Maximilian I.* anno 1500. *Choppin* (c) shews, that among the *French*, in the Succession to the Grandfather's Inheritance, the Uncle was constantly preferred to the Grandson. But, to come down to the present Times, we are assured by those learned Authors, who treat of them, that throughout most of the low Countries, as *Holland, Flanders, Guelderland*, the Diocess of *Utrecht, Hainault, Artois, Zealand, Overysse* and others, the Right of Succession to their Fiefs does not descend by Representation, but by Proximity of Blood only (d). As to our Kingdom of *Scotland*, we are not sure when it was first introduced into it: But it is highly probable, that it did not take place till some time after feudal Customs had got Footing among us; and that was certainly many Years after

(a) *De moribus Germ.* c. 19.

(b) *Leges Wisigoth.* lib. 4. tit. 2. leg. 3.

(c) *De morib. Paris.* lib. 2. tit. 5. Sect. 2.

(d) And it would seem, that, in Conformity to this Custom, in the late Act of the States General of the *United Provinces* in the *Netherlands*, by which the Prince of *Orange* is vested with the hereditary Right of *Stadtholdership*, it is particularly appointed, That, failing that Prince's Male-issue, the Succession should descend to his eldest Daughter, and her Male-issue; and failing that eldest Daughter's Male-issue, it should go to the second Daughter, and her Male-issue, &c. By which Act, all Representation is laid aside, the second Daughter being preferred before the Daughter of her elder Sister, or, in other Words, the Aunt to her Niece.

After the Time of *Kenneth III.* and consequently was no Part of the Law which he made concerning the Royal Succession; of which we will have Occasion to speak more fully afterwards.

2. The second Mistake this Author has fallen into, is, that he imagines, that where Representation does take place, the Person representing is intitled to all the Privileges and Prerogatives of the Person represented: which is far from being true: For in feudal Tenures, which were generally granted for military Service, tho' all the Children, or other Descendents of the Vassal, whether Male or Female of the same Degree, did equally represent his Person, yet Males only were called to the Succession. And in Fiefs that were indivisible, the eldest Male excluded all the rest; nay, in Fiefs where Females were admitted, they only had Right to the Succession when there were no Males descended of the last Possessor. For so long as there were any Males descended of him, tho' in a more remote Degree, they always excluded the Females. For this see that eminent Professor of Law *Jo. Voet*, in his Commentary on the *Pandects*, lib. xxxviii. digress. de feudis, § 61. p. 641. and the very learned *Herman Vultei*, de feud. lib. 1. cap. 9. § 71. & seqq. and the many Authors he there cites. See also *Jo. a Someren*, in his most accurate Treatise de Representatione, whose Words I have set down at the Foot (a). The above *Jo. Voet* calls the Succession of Females a *subsidiaria successio*, intimating, that it is nothing else but an interim or supplemental Kind of Succession, serving only to keep up the Propinquity of Blood, and to connect as it were one Male to another (b). And the same Author, *ibid.* § 77. tells us, that tho' there are some hereditary Fiefs in *Holland*, where Males on the same Degree exclude

(a) *Incapaces feudorum fœminas, repudiata Longobardorum lege, admiscerunt nostratum mores; eas quidem in aequali gradu positas masculi à feudo arcent; verùm ipse sanguine proximiores excludunt, reliquos, licet sexu prævalent; denegata representatione, nepos per se gradu remotior, non tantum à patre juniore, sed per amitam quoque à feudo secluditur.* Someren de Repræsent. cap. 10. sect. 4.

(b) Or, ob sanguinis continuationem, as the Lawyers speak.

exclude Females, but if the Females are one Degree nearer, they are preferred: Yet there are other Fiefs, which he calls *feuda recta*, (and are of the nobler Kind) where tho' Females are capable of Succession, yet they are never admitted, but upon the entire Failure of the Male-issue. How applicable these Things are to the Case of *Bruce and Baliol*, is not necessary to be explained.

3. That Author's third Mistake is, that he supposes, and all along takes for granted, that Representation in the collateral Line had the same Effect, and was of equal Extent with Representation in the Line descendent. For 1st, Representation among Collaterals is of a much later Date, than that among Descendents. Representation among Descendents was among the *Romans* of a pretty old standing: But that in the collateral Line was a Thing unknown and unheard of, not only in the Laws of the *xii Tables*, where the only Rule was, *Proximus agnatus familiam habeto*, but also in the Laws of the *Pandects* and *Code*. The only Thing that gives Countenance to it, is that famous 118 *Novelle* of *Justinian*, which changes a great many Rules of Succession, which had obtained before his Time (a), 2^{dly}, Tho' Representation in the direct Line did among the *Romans* extend to infinite, *i. e.* to all that were descended of the original Possessor; yet among Collaterals it soon stopt short, and went no farther than Grandchildren: All that came after succeeded *per capita*, and not *per stirpes*, as the Lawyers express it; *i. e.* came to succeed as individual Persons, and not as Branches derived from the last Possessor, the same Way as Moveables descend with us. And I might add, 3^{dly}, another Difference between those that were called to the Succession in the direct Line descendent, and those that were called to it in the transverse or collateral Line; that tho' among the *Romans* all that were called to the Succession, either by Representation or otherwise, in either Line, did

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(a) See that most learned and accurate *Treatise of Succession*, wrote by that great French Lawyer Mr. *Denise le Brun*, Advocate in the Parliament of *Paris*, lib. 3. cap. 4. sect. 3. p. 453.

did equally share of the Goods and Possessions of the Predecessor; yet among the *Hebrews*, and no doubt among other Nations in ancient Times, who knew nothing of Representation, there was a considerable Difference betwixt these two Kinds of Successors. For among the Males succeeding in the direct Line, the eldest, besides other Privileges and Prerogatives, had always a double Portion allowed him, which was not granted to the eldest Male in the collateral Line, nor even to the eldest Female in the direct Line; Nor were Females admitted to any Share at all in the collateral Line, unless when all the Males in both Lines had failed (u).

Having premised these Preliminaries, which are all founded upon indisputable Authority, I come now by the Strength that they afford me, not only to support the several Arguments I had brought in Defence of the *Bruce's* preferable Right, against the Objections made to them by this *Reviewer*, but also to put that famous Controversy in a better Light, than any Author, that I know of, has done before me.

"The Substance, says he, of Mr. *Ruddiman's* Answer to these Things [*viz. the three abovementioned Propositions, on which the Pamphlet-writer founds the Right of John Baliol*] may be reduced to the following Heads, *viz.*

"1st, That he doubts if the Succession to private Estates, at the *Era* abovementioned, went universally so as our Author has represented.

"2^{dly}, That tho' it had, the Laws and Customs of *Scotland*, with respect to private Heritage, cannot be a Rule for the Succession to the Crown; because they are altogether various and uncertain; and because in several other Countries, which he, *i. e.* Mr. *Ruddiman*, mentions, the Succession to the Throne does not go in the same Manner, as the Succession in those Countries does to private Heritage.

"3^{dly}, That we had nothing in our Constitution at that Time, whereby to determine the Dispute between *Baliol*

(u) Vide *Seldenum de succes. ad leges Ebraeorum in bona defunctorum, cap. 8.*

Baliol and *Bruce*; and that therefore the Law of Nature and Nations behoyed to be the Rule, and that according to this Rule, *Bruce* was preferable to *Baliol*.

"4thly, That by the feudal Law *Bruce* was to be preferred. And,

"5thly, That which most of all, *says he*, determines "Mr. *Ruddiman's* Judgment, in this Matter, *he says*, is "the Authority of two Kings, and of the Nobility, Barons, Freeholders, Clergy and Commonalty of Scotland."

S E C T. IV.

I. TO the first of these the Reviewer objects, "That "it is sufficient to justify *Baliol's* Claim, that "it was agreeable to the Laws and Customs of Scotland, which tho' not universally, yet generally obtained in the Succession to private Heritages." To this I answer, That tho' in my Reply to Mr. *Logan*, I was (to avoid wrangling) so modest, as to say simply, that I very much doubted whether the Custom in the Succession to private Heritages in Scotland, was so universal as King *Edward of England* had represented it: But now I speak more directly, that that Custom was so far from being universal in Scotland at that Time, that, for the most Part, it only took place in the lower Sort of Fiefs or Heritages: But in those of a superior Kind, which had high Dignities and Jurisdictions annexed to them, I make no doubt, but that, had such a Competition arisen as that between *Bruce* and *Baliol*, the Determination would have gone in his Favours, who had the same Plea that *Bruce* had. But be that as it will, it is highly probable, that both *Robert Bruce* the Competitor, and King *Robert I.* his Grandson, made a Distinction between these higher and lower Fiefs: For the former, in his Petition, calls these of the lower Kind, in which he allows that Custom to have obtained, *hereditates partibiles*: And the latter, in his Act of Parliament, yet more expressly names them *feuda inferiora*. And Sir *Thomas Craig*, after having divided all Fiefs into proper and improper,

proper, and having told, that these only could be called proper, that had a *Jurisdiction* or Court belonging to them, which the improper ones had not, he calls these last *feuda inferiora*. His Words are (a), *Advertendum tamen est, non semper feudum habere secum comitem jurisdictionem sive curtem: multa enim feuda sunt, quæ nullam habent jurisdictionem, veluti omnia FEUDA INFERIORA apud nos*. And elsewhere (b), he after *Hotoman* calls such Fiefs as these *Feudastrea*, i. e. *semifeuda*, quod à vera feudi natura degenerent. But tho' these Fiefs are most numerous, yet who can reasonably say, that the Rule of Succession to a Crown, which is superior to all Fiefs, should be directed by them, which are the lowest and the latest of all Kinds of Fiefs, and had not probably obtained among us an hundred Years before that Competition, and perhaps much less? But why should I insist on this, when I explain myself more fully in the Matter, in what the *Reviewer* calls my second Head?

But before I come to that, I must take notice of another Instance of the new Art the *Reviewer* has fallen upon in making Syllogisms. "Mr. *Ruddiman*, says he, doubts not if it was generally [i. e. the Custom of succeeding to private Estates] but only if it was universally so. But as he has not been pleased to favour the Publick with any of the Reasons for this his private Doubt, which can therefore affect no Body but himself; And seeing what he does not so much as pretend to doubt of, viz. that it was generally so in Scotland, is a sufficient Concession; may we not, in Consistency with the utmost Candor, conclude, that Mr. *Ruddiman* yields up this Point?" What Point? That King *Edward's* Decision was according to the Laws and Customs that generally obtained in Scotland; but not that these Laws and Customs obtained so universally, as that there were no Exceptions from them. For what hinders, but that as a sovereign Crown, and a private Heritage are *res diversissimi generis*, so the Rule of Succession

(a) Lib. 1. *Diag.* 10. Sect. 4.

(b) Lib. 1. *Diag.* 9. Sect. 6. 27, 28. & Lib. 2. *Diag.* 1. Sect. 5. & *Diag.* 5. Sect. 1 & 2.

Succession to the former might be an Exception from that which commonly obtained in the latter? He says I give no Reason for my doubting, why the Manner of Succession to private Estates did not go universally as he represents it, when immediately after I add a good many Reasons why that Custom could not be universal, such as, that those private Estates depend upon the arbitrary Pleasure of the first Granter, both as to the Conditions of the Possession of them, and the Manner of Succession to them; that many of them are to descend to Heirs-male only, others to Heirs whatsoever, &c. Are not these sufficient, not only to justify that my modest Doubt, (which he makes a silly Handle of) but also to shew, that all Estates and Heritages in *Scotland* do not descend *universally* after one and the same Manner? But he will say, that he meant only Estates *unentailed*, and where the Proprietors die *intestate*. And is not that an Exception from his Rule, when he must allow, that Estates entailed did frequently go otherwise? Had these last been governed by one fixt and uniform Rule of Succession, it was most natural, that as an hereditary Kingdom, such as *Scotland* then, and always was, is under a more strict Intail, than any Estate (as I have shewed before) can be; so the Succession to it should have chiefly followed that Rule. But as there is no certain Rule in the Succession to Estates entailed, which is various and mutable, according to the Pleasure of the first Granter, or some one or other of the Grantee's Successors, it was impossible in the Nature of the Thing, that the Succession to a Kingdom could be directed by those of Estates entailed. For how can that be a Rule to a Kingdom, which is no Rule to itself, nor to any Thing else? But tho' this alone is sufficient to establish what he calls my second Head, yet I shall next proceed to what he objects to it, not so much for any Necessity there lies upon me to say more of it than I have done, but to rescue it from the wretched Cavils and Glosses, which he uses to elude or disguise the Force of it,

SECT.

S E C T. V.

HE ushers it in with this Preamble, "Whether it be
 "that Mr. *Ruddiman* was conscious to himself, he
 "could never make out *Bruce's* Title to the Crown by
 "a Right similar to that whereby private Heritage de-
 "scends in *Scotland*, I shall not take upon me to say;
 "but he has thought proper to reject that Rule alto-
 "gether." But, why does he speak of what I was
 "conscious of? It had been much for his Credit, and
 "my Ease, if he had dealt as conscientiously in the Mat-
 "ter as I have done. I was, and so were both the *Ro-*
berts, and the Estates of *Scotland* in Parliament assem-
 "bled, fully, *i. e.* in our Consciences persuaded, that King
Robert I.'s Right to the Crown did not depend upon,
 "nor ought necessarily to be determined by a Right *si-*
imilar to that whereby private Heritage descends in *Scot-*
land; which Position being laid down, where was there
 "a Necessity that we should be at any Pains to find out
 "a *Similitude* between Things of so different a Nature,
 "that there could be no *Similitude* between them? Nay
 "further, which is the second Ground I go upon, it is
 "impossible, even for the *Reviewer* himself, to found the
 "Right of *John Baliol* on that Rule, for this good and in-
 "vincible Reason, that the Right by which private Heri-
 "tages were then succeeded to in *Scotland*, were not, as I
 "have said, *similar* among themselves, some of them go-
 "ing one Way and others another. But come we to that
 "which he calls my second Head: And here, to give
 "the Matter a wrong Turn, he asserts an egregious Fall-
 "hood. For,

In the *second* Place, he makes me to say, *That the*
Right to a Crown does not descend the same Way it does
in private Estates. But where do I say so? My Words
 "(which yet he has the Confidence to repeat afterwards)
 "shew the contrary, and can bear no such Meaning: They
 "are these, "I add further, that the Succession to private
 "Inheritances can never be a Rule to that of sovereign
 "Kingdoms;" the Reasons whereof I immediately sub-
 join.

join. But who sees not, that there is a wide Difference betwixt saying, *That the Succession to private Inheritances cannot be a Rule to that of sovereign Kingdoms*, because in the former the Manners of Succession are very various, and disagreeing one from another; and saying; *That the Right to a Crown does not, or may not, descend the same Way as it does in some of these private Estates*. This last it never enter'd into my Head to deny; but I deny that the Manner of Succession in some private Estates was a fixt and necessary Rule of itself for determining the Rule of Succession in hereditary Kingdoms. Thus in *France*, where there is a great Variety in the Rules of Succession to private Heritages, yet the Succession to the Crown descends in a Manner quite different from that of most, if not of them all. On the contrary, in *England* the Custom has for near 300 Years last past obtained, tho' not always, that the Crown should descend the same Way as it does commonly in private Estates unentailed, to Heirs whatsoever, and that by the Right of Representation, both in the descendent and collateral Line, and in each, for ought appears, to infinite. But then that Rule of Succession to the Crown was not founded on that which obtained in private Heritages; but was either previously inherent in the Constitution, or was after introduced and established by the supreme Authority of the Kingdom. But even here a Competition might arise like that between the *Bruce* and *Balliol*, viz; If a Case should happen that the King should have two Wives, and by the former of them a Son and a Daughter, and by the second a Son only. If the eldest Son should succeed his Father, but die before his Sister-german, and his Brother-consanguinean; it might be controverted which of these ought next after him to ascend the Throne. By the common Law of *England*, by which the whole Blood excludes the half Blood in the Succession to private Estates, the Sister ought to be preferred. But the second Brother, who was a Male, and equally near in Blood with his Sister (who was but a Female) to their common Father, would not fail to think an Injury was done him, should he be excluded

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from

from the Succession : And I leave it to the *Reviewer* to decide the Question. If this will not answer, take another Instance, where it may happen, even in *England*, that the Descent to a private Estate may go otherwise than that to the Crown, viz. By that famous Law of *Edward III.* called the Law of *outré le Mer*, it is ordained, That if one descended of *English* Parents shall be born abroad out of the Kingdom, he is thereby rendered incapable of succeeding to his said Parents. But the Descendents of the Royal Family are expressly excepted from that Law, and are declared capable of succeeding to the Crown, without Regard to that Circumstance of the Place of their Birth. But the most material Difference between royal and other Successions in *England*, lies in that wherein they have the greatest Resemblance to one another, viz. Dignity and Power. The Crown of *England*, which is the highest Dignity itself, and the Fountain of all other Dignities, descends to Heirs whatsoever, i. e. to Females as well as Males, and that *per stirpes* and not *per capita*, in infinitum, as is above represented ; yet all Titles of Honour, as of Dukes, Marquesses, Earls, &c. are now almost always, and for many Ages backwards very frequently were, transmitted to Heirs male only ; and the same Custom did very much obtain in *Scotland*. Hence we see, that if we consider the King of *Scotland* or *England*, as a Name of Dignity, Authority and Power, the Succession to the Crown did not descend the same Way as that to inferior Titles of civil Honour and Dignity generally then, and ever since has done. This was the fundamental Error in King *Edward I.*'s Decision, that he most falsely maintained, that the Kingdom of *Scotland* was a Fief of *England*, i. e. a great Estate holden of him as its supreme liege Lord, and consequently that the Succession should go according to the Laws and Customs by which other Fiefs or Estates in either Kingdom did go to the next Heirs. And indeed, taking the Matter in that View, and considering *Scotland* as an Estate, or great Tenement of Lands unentailed, he had a specious Pretence for pronouncing in favour of *John Baliol*. Tho' had the

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Sovereignty of Scotland, even as a Vassal-kingdom, been considered, as it ought, as a Title of high Dignity, Jurisdiction and Power, the Argument he proceeded upon was, in my Opinion, ill founded (a). But whatever is in that, as the Ground he went upon was absolutely fictitious and vain, so the Sentence he founded upon it was equally false, wicked and unjust. The Estates and People of Scotland had a quite different and juster Notion of the Thing: They considered their Kingdom, as it really was, as a free and independent Heritage, subject only to its own native hereditary Prince, who acknowledged no Superior above him, but God alone; and consequently that the Rule of Succession to it was not to be taken from the Customs that had lately crept in among Subjects, but to be determined by other Laws, namely by those of God and Nature, and especially that which was agreeable to *Kenneth III.*'s Constitution, and which had not (unless by Usurpers) been broken or transgressed down to that Time. But these Things I reserve to be further confirmed when I come to the third Head.

To return back then to what the *Reviewer* objects to my second Head. He, after the false Interpretation he has made of my Words, as I have shewed above, proceeds thus: "I cannot fail to take notice of the great Difficulty, I may say Impossibility, which I find to reconcile this new Doctrine (for so before and afterwards he calls it) with his, i. e. Mr. *Ruddiman*'s old Doctrine on that Subject. It has already been quoted from his Annotations on *Buchanan*, where he says, *The Crown of Scotland descends, eodem jure, by the same Right* [he adds, to disguise the Fallacy, LAW or RULE] whereby Children usually succeed to the Estates [here we have another Fallacy, for my Words are GOODS and POSSESSIONS] of their Parents. Let us charitably suppose (continues he) he has either forgot himself, when he wrote that Annotation, or that

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(a) And therefore it was justly said by *Robert Bruce* the Competitor, in his Petition, *Quod lex & consuetudo quas sunt inter tenentes & subditos superiorem ligare non possunt, precipue Regem suum.*

“ he has, since that Time, upon more mature Consideration, changed his Opinion with respect to that Point.” May I not here cry out with the Poet,

— *hic nigrae succus laliginis, hæc est* *Erugo nera.*

It is my hard Fortune, (and I am sorry I should have Occasion to say it) that I have to do with a strange Kind of Antagonists, who all of them, one after another, have set themselves to torture and wrest my Words into a Sense, not only contrary to my plain Intention, but to the obvious Meaning of them. To make this appear, I must refer the Reader to the Passage itself, (not as it is curtailed by these Writers) but as it stands in that my Annotation, and is here subjoined at the Foot (a). It is designed to correct an Error Buchanan and others had fallen into, who, it seems, commenting the Reign of our David II. from the Time of his Coronation, have made that King's Reign two Years shorter than it really was. As that Error, especially in Buchanan, seemed to turn upon this, that our Kings had no Right to enter upon the Government till they were crowned, or, in the Opinion of some among us, till they were elected by the People: To disprove this, in that Note I took Occasion to shew, that our Government was not *elective*, but *hereditary*, and that consequently there was no Inter-reign in it, but that upon the Death of one King, another, that was next in Blood to him, did immediately succeed, by the same hereditary Right that Children acquire a Dominion or Property in the Goods and Possessions of their deceased Parents. Upon this, first the Pamphlet-writer, and then Mr. Logan, take the Freedom to translate my Words *eodem jure*, the SAME WAY, as if I had written *eodem modo*; and thence infer, that I give the same Right to Kings over their Subjects, that Masters have over their Hends of Cattle and Flocks of Sheep: i. e. that they may

(a) *Cum enim regnumoticum, non ex Ordinum suffragiis pendeat, sed jure sanguinis hereditario in genere proximos continuo descendat, plane consequens est, nullum hic interregnum fieri, sed uno Rege mortuo, alium statim in ejus locum, & ita deinceps, perpetuo tenore, succedere, eodem jure, quo filii in patrum defunctorum bona & possessiones dominium protinus acquirere solent.*

may butcher and destroy them at their Pleasure : Which is an Opinion in itself abominable, and infinitely removed, as from Truth, so from my Thought. Not content with this, the same Mr. Logan has two idle Quibbles on the Words *FILII*, and *ACQUIRERE DOMINIUM*, the Emptiness of both which I have exposed in my Answer, p. 37 and 41. But the Reviewer, that he might (as the Latin Proverb has it) *cornicum oculos configere*, i. e. that he might shew himself more sharp-sighted than these his Predecessors, who were otherwise as much inclined to pick a Hole in my Coat as he, has, by his inimitable Sagacity and Penetration, discovered from these two Words in my Annotation, *EODEM JURE*, that I have either forgot myself when I wrote them, or that I have since changed my Opinion. But how can he make out this; otherwise than by supposing, that all *hereditary Rights* are of the same *specifick Nature* all the World over, and that there is no Difference among them? Whereas every body that reads my Annotation, cannot but evidently perceive, that I am speaking of *hereditary Right in general*, as it is distinguished from *Election*, without Respect to the various Manners in which it is, by Law or Custom, particularly conveyed. And it is the more disingenuous in this Author, to put another Sense upon these my Words, when I had so fully explained myself on that Head in my Answer to Mr. Logan, p. 41. where I say, “ That whoever reads my Words with a single Eye, “ cannot but evidently perceive, that in the Comparison “ I there make, I did not, nor could intend to distinguish between the Laws of *Scotland*, and these of other Countries, [and I now add, *between the different Rules of Succession that have been introduced in that Kingdom*] or whether these Goods and Possessions were real or moveable, or whether the Children that were to succeed were one or many, Sons or Daughters, (for the Word *filii* will take in both) “ but only meant in *general*, that, as by the Laws of “ the whole Earth, as well in *Scotland* as elsewhere, “ Children do succeed to the Goods and Possessions of “ their pre-deceased Parents; so did the Kings of *Scotland*, “ land,

"*land*, by a natural hereditary Right, succeed directly
 "and immediately, in a lineal Order, one after ano-
 "ther, to the Government of the People and King-
 "dom." Since therefore all hereditary Rights whatsoe-
 ver, are comprehended under one common Head or *Ge-
 nus*, which is with respect to every one of them, *unum
 est idem jus hereditarium*, and is as a Root is to the Bran-
 ches, or a Fountain to its Streams, it is absurd and ridi-
 culous to apply that *general* Acceptation of the Words
 to any *particular Species* or Manner, by which it is con-
 veyed; and far less, that because I say the Crown of
Scotland is hereditary, I should mean that the Right to
 it should descend the same Way as it does in private Heri-
 tages. Our Author's Argument is just such an one as is
 the Sophism sometimes used in the Schools of Logici-
 ans: *Homo est animal, asinus est animal; ergo homo est
 asinus.*

But to shew yet further, how idle, not to say absurd,
 this Author's Cavil is, he must allow me to tell him, that
 my Words in that Annotation, tho' they should be taken
 even in the particular Sense he would put upon them;
 yet are so far from answering his Purpose, that they stand
 directly against it. This will appear by the Phrases I
 there make use of, in stating the Comparison of that
 Right which the Kings of *Scotland* had to succeed one
 after another, with the Right which Children have of
 succeeding to their Parents. For, as of the former I
 say, that *regnum Scoticum non ex Ordinum suffragiis pen-
 deat, sed jure sanguinis hereditario in genere proximos
 continuè descendat; i. e. That the Crown or Government
 does not depend on the Votes of the States, but descends
 immediately to them that are nearest in Blood to the last
 Possessors*: So of the latter I say, that this hereditary
 Rule of Succession is the same with that by which *fili
 in parentum defunctorum bona & possessiones dominium
 protinus acquirere solent; i. e. by which Children use im-
 mediately to acquire a Dominion or Property in the Goods
 and Possessions of their deceased Parents*. Here the Com-
 parison is every Way full and perfect on both Sides.
 The *PROTINUS* in the latter Clause answers to the *CON-*

Triuo; in the former, and excludes all Elections, or the Deeds of other Persons, for the giving or compleating that Right, which each have, in the supposed Events. And the FILII, or *Children*, in the latter Clause, in like Manner answer to the *GENERE PROXIMI*, or nearest in Blood, in the former Clause. By which Comparison it is plain, that our Author's *Right of Representation*, which he would force out of my Words, is absolutely excluded by them. For who can be nearer to a Father, than his own immediate *Children*, Sons or Daughters; or to a King, than he that is *genere proximus*, or nearest of Kin to him, I. e. his Son, Daughter, Brother, Sister, Nephew, Niece, &c. according to that Degree of Proximity in which by Nature they happen to stand related to him at his Death? This fictitious Representation then, which never yet took Place in the Succession of our *Scottish Kings*, has as little place in that my Comparison, unless the *Reviewer* can find out a Person that is nearer than him that is nearest to the last Possessor: Or, in other Words, can maintain, that a Man's Grandson or Grand-daughter is more nearly related to him than his Son or Daughter.

Having thus fairly reconciled what I say in my Answer to Mr. Logan, with what I have said in that my Annotation, and that I do not advance two different Doctrines, but one and the same in both; I should now proceed to the Objections he makes to my second Head, as he calls it. But before I come to them, I must first ask this Author, how he comes to call that Position of mine (*viz.* that the Manner of Succession in private Estates ought not necessarily, and *quâ talis*, to become a Rule for that of a Crown) a NEW DOCTRINE? I hate all Doublings and Shiftings, which are always the Sign of a bad Cause. The Doctrine I advance, is (as I said) one and the same, and is no other than what was asserted by *Robert Bruce* the Competitor upwards of 450 Years ago, and within a few Years after was confirmed, and in a Manner sworn to (as I have shewed above) by the Clergy, Nobility, and Freeholders of *Scotland*, in a full and free Parliament. If such a Doctrine, that was taught and firmly believed to be true, by the Community, I may say, of a whole

whole Kingdom, at the Distance of so many Ages before us, can be called *new*, then we may invert *Solomon's* Observation, *Eccles. i. 9.* and say, *That there is no OLD Thing under the Sun.* Come we now more directly to the second Reason I give; why the Manner of Succession to private Inheritances cannot be a Rule to that of sovereign Kingdoms; which is, that that of the latter is *fixed, regular and uniform*; whereas that of the former, as depending very much on the arbitrary Pleasure of the first Granter, or of some intermediate Possessor, is subject to great Variety. And of this I give some general Examples. 1st, With respect to the original or other Proprietors. 2^{dly}, With respect to the Persons who are to succeed: And 3^{dly}, With respect to the Subject, whether moveable or immoveable, which is to be succeeded to. In the first Kind of Succession there can be no Rule at all. For how can a Rule be made out of that, which depends entirely upon the Free-will and Pleasure of another, who can order the Succession to go as he shall think fit? But 2^{dly}, With respect to the Persons who are to succeed, we find a considerable Difference in our Law, viz, that in Heritages the eldest Male excludes all the other Children, whether Males or Females: But if there are no Males, the Daughters all succeed equally. But our Author will say, if the Estate is indivisible, the eldest Daughter will only succeed, to the Exclusion of all the rest: But who made such an Estate indivisible, (for there is no Estate that naturally and of itself may not be divided?) Who but he only, that by his arbitrary Will at first, or afterwards, appointed it to be indivisible, and might have done otherwise, if he had so pleased? Titles of Honour indeed with us are indivisible: And these are they which have the nearest Resemblance to royal Dignity. But I know no Estates, but those that are most strictly entailed, which may not be, and are not daily divided; nay further, which may not be sold, commuted, mortgaged, dilapidated, or brought to nothing; so as the next Heir shall never enjoy either the whole or any Part of them. But 3^{dly}, With respect to the Subject which is

to be succeeded to, we find also a remarkable Difference among us as to the Manner of Succession; for in Estates, and such Things as we call *immoveable*, the general Rule of Succession is, as I have above described; with this Addition, that they go by Representation, *i. e. per stirpes* and not *per capita*. But it is far otherwise with *Moveables*, for they go equally to all these that stand in an equal Degree of Consanguinity to the last Possessor, to the Exclusion of all those that are more remote.

But let us hear the fine Objection the *Reviewer* makes to all this. He first tells us, *That I have endeavoured to represent our Laws as a Heap of Confusion*. But before he comes to be more particular as to that Point, he immediately adds, "That, in order to clear up this Matter, it is proper to observe, that as to the first two Instances I mention, of Honours that are bestowed at the King's Pleasure, and Entails of Estates, which are made according to the Pleasure of the Entailer, they have no Manner of Concern with the Case in hand; because the Succession to these must go in such Manner as the royal Patents or the Entails provide." Is not this an excellent Evasion to tell us, that Titles of Honour and Estates entailed have no Concern with the Case in Hand? What? Is not the sovereign Dignity, or the Name of a King, not only a Title of Honour, but the highest of all Honours, and from which, as from their original Fountain and Head, all others issue and descend. If then the Succession to this first and supreme Honour is to be regulated by the Manner of Succession to these secondary ones, which bear the nearest Resemblance to it; and if these are bestowed arbitrarily, and have no fixt Rule for the Succession to them, but the mere Will and Pleasure of the King that granted them, must his Crown and Dignity descend to such Heirs as he shall think fit to nominate and appoint? This is what the *Reviewer* (as we shall see afterwards) will by no means allow; and the Truth is, it did never obtain in *Scotland*, however it might perhaps have taken place in some other Kingdoms or Empires. But I add, that the King is not only the Fountain of Honour, but also the paramount and

sovereign Lord of all the Lands and Estates of the Kingdom, and the Possessors have no other Right to them, but what is originally derived from him. And if the Succession to them is subject to such Limitations and Restrictions, as he has thought fit to put upon them, and if the Rule of Succession to one of them cannot be the Rule of Succession to another, how can that which has so many various Rules of Succession, be a Rule for the Succession to a Kingdom, which is to be supposed to be *one, fixt, certain and uniform*? One Estate goes no further than the Person of the first Grantee: Must therefore the Right to a Kingdom end with the Life of the Possessor? Another is granted to Heirs-male only: Must therefore all Heirs-female be excluded from Succession to a Throne? A third is given to Heirs and Assigns: Must therefore a King have it in his Power to transfer the Kingdom to whom he pleases? And finally, a fourth is granted to Heirs whatsoever; And it is this last our Authors will have to be the Rule of Succession to a Kingdom. But why that more than any of the other three, there being no Reason in the Nature of the Thing, that the Crown should go this Way more than any of the other three? I have all along owned, that if Law or Custom had made it to go after that last Manner, it not only may, but ought to go so. But if the Law is silent on that Head, and much more, if it is express to the contrary, as I shall shew afterward; and if no such Custom can be pretended, nor so much as one Instance can be given, that the Crown of *Scotland* did ever descend after the Manner those Authors would have it, then it evidently follows, that no Consequence can be drawn from the Succession in private Estates to that of a Crown. What I have said of Titles of Honour and Estates granted by the King, will equally hold of Estates entailed by Subjects, seeing, as our Author is forced to acknowledge, they in like Manner depend upon the arbitrary Will of the Entailer.

Come we then to consider what is most falsely alledged by the *Reviewer*, viz. that I *represent our Laws as a Heap of Confusion*. How he could say so is incomprehensible, when

when I have so fully mentioned and enumerated all the general Laws relative to that Head, in all the Respects they can possibly fall under. 1st, That of the first Granters, or other Disposers of those Estates, or other Possessions. 2^{dly}, That of the Persons who are to succeed to them. And 3^{dly}, Of the Things that are to be succeeded to. How much further he would have me to go I see not, unless he would have me to mention all the particular Ways by which Men would have their Goods and Fortunes to be conveyed to others. As to the general Laws I have mentioned, I know no Exceptions from them, but what turn upon the Will and Pleasure of the Possessors; and so far as they deviate from these Laws, may be comprehended under the Name of Entails. For so far as a Man's Goods or Estate does not descend according to these Laws, so far he is to be understood to have provided that they should go otherwise, *i. e.* to have entailed them.

Upon this however the *Reviewer* brings on the oddest Comparison that ever was made. "It would, *says he*, be reckoned a very ridiculous Kind of Reasoning, concerning the Laws of any Country, to say, that because there was one particular Law in it for the Punishment of such as took away the Life of the supreme Magistrate, another for such as killed their Parents; one for those that committed an ordinary Murder, and another Law concerning such as killed their Neighbour accidentally, or in Self-defence, I say, it would be reckoned a very ridiculous Kind of Reasoning for any Person to say, that because there was a Variety in the Laws, answering to these various Cases, therefore the Laws of such a Country, concerning the taking away the Lives of our Fellow-creatures, were altogether uncertain: And I appeal to you, *adds he*, *i. e.* the Person to whom he addresses his Paper, if Mr. *Rudiman's* Reasoning in the present Case be not of the same Nature," *i. e.* very ridiculous. I have racked my Head not a little to apply the Parts of this Comparison to my reasoning upon the Subject of Succession in *Scotland*; but cannot for my Heart make them out.

Thus much I find, that the Punishment or Death of the Criminals he speaks of, must resemble the Estate to be succeeded to. Again, that the Criminals themselves, according to the Variety, or more or less Hainousness of their Crimes, are to be compared to the Persons that are to succeed, *i. e.* as the former are *servi pœnæ*, so the latter are *domini hereditatum*. But how to make up the next Branch I know not. For tho' the Law has ordained all these whom he will have to be Criminals, to have their Lives taken from them, [tho' the two last he mentions, *viz.* the Committer of casual Homicide, and one that kills another in Self-defence, deserve no such Punishment] yet it has not appointed that all Pretenders, or even the nearest Relations, should succeed to the Goods or Estates of the last Possessors; but has laid down certain Rules by which sometimes one and sometimes others are preferred. And are not these what I have particularly mentioned? The *Uncertainty* I speak of lies not in these Laws, but in the Difference that is among them, and more especially in the *Uncertainty* there is how to apply them to a Kingdom, which is a Thing vastly different from all private Goods and Possessions. For the Rules of Succession in these last being various, only one of them can be applied to that of a Kingdom: But what that should be, cannot rationally be fixt upon with respect to one more than another; unless that one should be the Rule of all Successions, which cannot be pretended, (for then all other Rules of Succession would be unlawful,) or unless there were some certain Law or Custom, appointing the Succession to a Kingdom to go the same Way that that one does. But then it is not from any necessary Connexion that that one Rule of Succession has with that of a Kingdom, but from that Law or Custom that has appointed the one to go the same Way as the other. But since, as I have often said, no such Law or Custom did ever prevail, or so much as once take place in *Scotland*; it is certain, that whatever becomes of my Reasoning, that of the *Reviewer*, which has no other Bottom, but that contrary and false Supposition, must fall to the Ground. But be-
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sides the Uncertainty there is how to apply the various Laws of Succession abovementioned to that of a Crown, there is another, and more general one, if it can be called a Law, by which the King, by his Prerogative royal, can bestow his Favours as he pleases, and can grant Honours and Estates under such Rules of Succession, as he shall think fit and that the Possessors of private Estates, or other Goods that are not entailed, have a Right also to do the same. But how can the *Reviewer*, or any other for him, set Bounds to, or fix any Certainty in these Successions, unless he can find out a Way to ty up the Wills and Inclinations of Men, which God Almighty himself has not thought fit to do, nor indeed (with all due Reverence be it spoken) can do, without destroying that natural Liberty, with which he has indued all the rational Part of his Creation? I hope now my Readers understand in what Sense I meant, that these Laws of ours are *uncertain*; and that I may, in my Turn, securely appeal to them and all the World, that my Reasoning upon the Point is just and pertinent, and that not it, but the *Reviewer's* Comparison is wretchedly inept and ridiculous.

This Author goes on next to what he calls my second Reason; but which is only (as he has ordered the Matter) a second Branch of it, *viz.* That the Laws and Customs of *Scotland*, with respect to private Heritages, cannot be a Rule for the Succession to the Crown of that Kingdom; because it is not a Rule in other Kingdoms. And of this I give Examples in *France*, in *Germany*, in *Poland*, and in the Dominions of the House of *Austria*. To which I might have added some others. But what Reply makes he to this? No other than what is of a Piece with his former Way of managing this Controversy. What I have said of the Manner of Succession in other Kingdoms and Countries, he cannot deny: "But, says he, (or the Pamphlet-writer whom he follows and defends) it was otherwise in *Scotland*; for there the Succession to the Crown, and that to private Heritages, did run in the same Channel." What is this, but a shameful begging of the Question? And to
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carry his superlative Confidence a Step further, he asserts, "That he has my Authority for it, not dreaming he" (i. e. the Author of the Pamphlet) supposes, that I "would be the first Man that would contradict it." But where have I said, or so much as insinuated any such Thing? I know this Assertion of his is founded on the Words *eodem jure hereditario*, in my forecited Annotation on *Buchanan*. But I have shewed above, as well as in my Answer to Mr. *Logan*, that these my Words in that Place are not capable of that Meaning, and that none can with Confidence impute it to me, unless he that will say, that all the living Creatures that God has made are of the same *Species*, because they are all comprehended under one and the same great *Genus* of Animals; or, in other Words, that all hereditary Successions are precisely of one and the same Kind, and that there is not the least Difference among them (a).

I pass over the idle Discourse the *Reviewer* entertains us with, as to the Examples I had brought of several Kingdoms and Countries, where the Succession to them runs in another Channel than that of the Estates that are subject to these Kingdoms. He owns the Thing, and whatever else he can say of them is out of Purpose.

But what if I say the same of the Crown of *England*, that the Right to it did not always descend (nor perhaps was thought to descend at the Time of the above Competition) in the same Manner that it did in private Estates belonging to that Kingdom. *Edward I.* indeed founded his Decision in favours of *John Baliol* upon this, that it was according to the Customs of *England* as well as

(a) This is so far from being true, that there is hardly a Province, or considerable City, or District in *France*, that hath not some particular Customs of Succession different from that of others. Thus even in *England* there is some Variety: For in *Kent* Heritage goes to the youngest Son, in *Nottingham Shire* all the Children succeed equally. In the Time of *Henry I.* the Father or Mother succeeded to a Son dying without Children, before his Brothers or Sisters, [*V. Spelmanni Cod. leg. veterum Angliæ*, l. 70. apud *Wilkinsii leges Anglo-Saxonicas*, p. 266.] But now the Father is absolutely excluded from Succession, in so much that the Uncle is preferred before him. See *Craig. Lib. 2. Dig. 13. § 46.* And yet in all these the Succession is hereditary, tho' the Rules of it are very different from one another.

as *Scotland*, tho' that, as I said, was far from being universally true, in either Kingdom. But then he most falsely maintained, and grounded his Sentence upon it, that *Scotland* was a Fee-liege of *England*; tho' indeed, taking the Matter in that View, he had (as I said before) a specious Pretence for that his Decision. But he was not Fool enough to say, that the Kingdom of *England* was a Fief, or that the Rule of Succession to it, and to private Heritages in it, was the same. He knew that his own Grandfather King *John*, had come to the Crown another Way. For, tho' his elder Brother *Jessy*, Earl of *Bretagne*, had left a Son named *Arthur*, yet he peaceably and without Opposition mounted the Throne, and was never till of late, or by very few, reckoned an Usurper for so doing. The Title he claimed the Crown by was, that he was nearer in Blood by one Degree to *Richard I.* the last Possessor, than *Arthur*, he being the Brother, and the other only the Nephew of that King. That which has misled the later *English* Writers to reckon King *John* an Usurper, is, that they supposed the *English* Constitution, with respect to the hereditary Succession to the Crown, to have always been the same that it is now: Whereas the Rule of Succession *on jure repræsentationis*, was very little known in the World in King *John's* Time. He was so far from being singular in that Matter, that many Kings, Princes, great Lords, and others succeeded to their Dominions and Estates, after the same Manner that he did, without being accounted Usurpers on the Rights of others that were in Prince *Arthur's* Circumstances. Of this we have many Examples in the Histories of *Spain*, *Sicily*, *Burgundy*, &c. both before and after that Time: Not to mention smaller Estates and Fiefs, that descend after that Manner to this Day. That which chiefly inclines some People to reckon King *John* an Usurper is, that he was a very weak, cruel, and tyrannical Prince. But that that did not hinder his Title from being just, appears from the Homilies of the Church of *England*; (to which all its Clergy are bound to give their Assent) in the sixth and last Sermon whereof, *against wilful Rebellion*,

bellion, he is called *the People's sovereign Lord the King*, and *their natural Lord the King of England* (a). That that Rule of Succession these Authors speak of, was not fully established in *England* for near 200 Years after, appeared in the Claim made to the Crown by *Henry IV.* He thought Injustice was done him, in *Richard II.*'s being preferred before his Father *John of Gaunt Duke of Lancaster*, he being the Son, and *Richard* only the Grandson of the last Possessor *Edward III.* This *Henry IV.* came to the Crown indeed by very wicked and detestable Means: But otherwise it is hard to say, that his Title was not just and well founded. This is certain, that the whole People acknowledged him for their lawful Sovereign, as they did also his Son and Grandson *Henries V. and VI.* until that *Richard Duke of York*, taking Advantage of the last *Henry's* Weakness, and the many Disorders and Troubles in the Kingdom, and the vast Losses sustained in that of *France*, which *Henry V.* this King's Father, had conquered, and all his Successors since keep up a Title to; until, I say, that *Richard Duke of York* put in his Claim to the Crown, as being descended of *Lionel Duke of Clarence*, who was third Son of *Edward III.* and elder Brother to *John of Gaunt*, Duke of *Lancaster*, whose Son and Heir was the above *Henry IV.* King of *England*. What a long civil War and terrible Bloodshed, that Competition between the two Houses of *Lancaster* and *York* brought upon *England* is too well known. 'Tis true, that the Duke of *York* insisted,

(a) 'Tis not a little surprising, that the learned and judicious Mr. *Carter* should in the History of that King, so often insist and harp upon it, that he was an Usurper, when, as I have shewed, there is little or no Ground for it. Drs. *Stillingfleet* and *Higden* (likewise supposing that King *John* was not otherwise a lawful King) infer from the above Words in the Homily, that the Clergy of *England* in Queen *Elizabeth's* Time were of Opinion, that Possession alone gave Right to a Crown: This absurd Doctrine was not known by the Clergy of *England* at that Time, nor by any other in the World, till it was of late taken up to justify King *William's* Title to that Throne. Dr. *Bedford*, who in his hereditary Right, &c. has at large confuted that Doctrine, in his p. 67. imputes the Words in the Homily to the Composer's Ignorance in that Point of History. But I could shew, if there were Occasion for it, that he also is mistaken,

lified, that his Title was founded upon Law and Custom; and got a Parliament to confirm what he alleged. But we have good Reason, from the Conduct of Parliaments upon other Occasions, to believe, that it was the longest Sword, and not the real Point of Right, that put an End to that Controversy: And that had *Henry VI.*'s Arms prevailed, as they had oftner than once a fair Prospect of doing, we would never after have heard that what *Richard*, or his Son *Edward IV.* advanced, was the Rule of Succession in that Kingdom (a).

To consider this Matter in the Abstract, and without regard to the Laws and Customs concerning Succession, as they have been received in diverse Countries, and which, tho' very various, must be the Rule where they are received: Yet I say, that laying that aside, and considering the Thing in the Abstract, it is perhaps one of the most difficult Questions in the World, that can have a just and true Solution given to it, Whether a King's second Son, or his Grandchild by his eldest Son, ought to succeed him? That great *French Lawyer Andrew Tiraqueau*, writing upon the Subject, calls it a *vastissimum pelagus*, signifying, that he had no sure Ground to fix upon, nor knew well how to bring himself safely to Shore. And tho' he, *Hottoman*, and a great Number of the more modern Lawyers, being chiefly carried away by the *jus representationis*, or the *jus suitatis*, as *Hottoman* names it, which had much prevailed in their Time,

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(a) It is remarkable, that *Richard Duke of York* founded his Claim on that Maxim of the *Roman Law*, *Jura sanguinis nullo jure civili dirimi possunt*, Dig. l. 8. de reg. jur. But if that Maxim is to be understood, in the Sense it was then taken in, it was directly against, and not for that Duke. For laying aside the *jus representationis*, (which was not then among Collaterals known in the World) the Right to the Crown fell to the House of *Lancaster*. It is moreover to be observed, that *Henry IV.* had the Advantage of Masculinity; for he was the Grandson, and *Philippa* (of whom the Family of *York* did descend) was only the Grand-daughter of *Edward III.* Besides *Richard Duke of York*, who claimed the Crown by Descent from her, was her Great Grandson by another Female, viz. *Anne Mortimer*, married to *Richard Earl of Cambridge*, Son of *Edmund de Langley Duke of York*, fifth Son of *Edward III.* and by him Mother to this *Richard II. Duke of York*: Where as all the Descendents of the House of *Lancaster* were Males.

are for giving the Preference to the Grandson ; yet a great many others of the first Rank stand up for the contrary Opinion. They generally agree, that where the Subjects to be succeeded to are partible or divisible, the Uncle and the Nephew ought to come in for equal Shares. But where the Matter is indivisible, as Kingdoms, and Titles of Honour and Dignity are reckoned to be, they are far from coming to an Agreement. I have mentioned two of the most eminent of them that declare in favour of the Nephew. Of these that are for preferring the Uncle, I shall only name one, but such a one as his Authority is of greater Weight than that of many others, I mean that Prince of Lawyers *James Cujas*, the famous Professor at *Bourges*, whose Words are so express, that I have set them down at the Foot (a).

But if so much can be said in Favour of the Uncle, (or second Son of the last deceased King) how much more can be said in Favour of *Robert Bruce* the Competitor ? For besides the Prerogative of his Sex, or Masculinity, (as the *French* call it) which naturally gave him the Preference to *Dervogild*, as we have shewed above : We are likewise to consider that the Dispute in the former Case run between two of the descendent Line, both deriving their Blood, the one immediately, the other mediately, from the same Person, who was last

(a) *Juris rationibus si certamus, potior est filii causa, quam nepotis ex filio primogenito ; fratris, quam filii fratris primogeniti.*—And after he has given these Reasons founded on Law, he adds, *Ergo cum primogenito defertur hereditas, non potest esse representationi locus, sed sicut, ubi proximitas spectatur, cum vocamus qui proximior fuerit mortis tempore, vel quo bon. possessio petitur, L. 1. D. unde leg. L. 3. D. unde cog. ita ubi primogenitura observatur, cum vocamus qui moriente eo, de cujus bonis agitur, primogeniti gradum locumque tenuerit, non proximioris jam ante mortui filium : et ita Carolo II. Rege Sicilia mortuo, relicto filio Roberto secundogenito & ex filio primogenito primoque mortuo nepote ; filius, ex responsis prudentum & Bonifacii pronuntiatione, praelatus est nepoti. Et ita hodie observatur in Neustria, ubi primogenitus ipso jure assem occupat, ut nepos ex filio primogenito non habeat jus primogenitura, quamdiu alius filius defuncto superest ; contra morem antiquum, quem fuisse justiore plerique contendunt, STULTE.* Thus this great Man, *de feud. lib. II. tit. 11.* who, speaking a little above of the Controversy betwixt the Houses of Lancaster and York, seems to prefer the House of Lancaster, as does also another eminent French Lawyer, *René Cboppin de dominio Francie, lib. II. tit. 12. § 4.*

last in Possession: Whereas the Competition between *Bruce* and *Baliol* run between two of the collateral Line, and that at a great Distance from the last Possessor. For so far were they from being descended of *Margaret* of *Norway*, who was last in Possession of the Crown, or indeed of any of her three Predecessors, that it behoved their Propinquity to her to be carried six Degrees backwards, or upwards to *David* Earl of *Huntington*, who was Brother to her *Abayus*, or Grandfather's Grandfather, and then brought three or four Degrees downwards from that Earl; *Robert Bruce* being his Grandson, and *John Baliol* his Great Grandson. As therefore all Propinquity by Blood betwixt Persons is more or less regarded, according as they are more nearly or more remotely related to one another; hence it was, that by the *Roman Law* (as I observed before) the Right of Representation among Collaterals went no further than Grandchildren.

S E C T. VI.

THE *Reviewer* is now advanced to what he calls my third Head, tho' it is rather my fourth or fifth. "It was, says he, that we had nothing in our Constitution at that Time, whereby to determine the Dispute between *Baliol* and *Bruce*; and that therefore the Law of Nature and Nations behoved to be the Rule, and that, according to this Rule, *Bruce* was preferable to *Baliol*."

This Author continues, according to his laudable Custom, to misrepresent every Thing I say: For my Words are not, that we had nothing in the Constitution of *Scotland* to determine that Controversy, but only "that we had little to fix upon, as to it, at that Time; and that tho' King *Kenneth* III.'s Law had determined the Rule of Succession in the descendent Line, yet he had given us no particular Law in case of a Dispute among Collaterals (a)." But now, having considered

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(a) The Truth is, (for I will dissemble nothing) that trusting too much to *Bosce*, *Lefly* and *Buchanan*, who in the Account they give of that

the Matter more fully, I add, that even that Law or Constitution of *Kenneth III.* (as it is exprest by our oldest Historian *Fordon*) if duly attended to, was sufficient of itself to determine that famous Controversy; and that, according to it, *Robert Bruce* had the preferable Right. But before I proceed to that, I must premise, that supposing that little or nothing could be made out of King *Kenneth's* Law for deciding the Dispute, and since (as I have often said) we had no other Law of our own for determining it, and that the Manner of Succession in private Families can only be a Rule to themselves, and not to that, which is far above them, a Crown; what can be more reasonable than (as I have said in my Answer to Mr. *Logan*) to have Recourse to the Law of Nature and Nations? This was what *Bruce* the Competitor appealed to, and put the Issue of his Cause upon: And brings me to what was the principal Design of this Undertaking, which was to prove, 1st, That by the primitive Law of Nature; 2^{dly}, By the positive Law of God himself; and 3^{dly}, By the Law of *Kenneth III.* and the Constitution of *Scotland* ever since, *Robert Bruce's* Right was preferable to that of *John Baliol*. I added also, that it was agreeable to the civil and feudal Laws. But of its Conformity to the first of these I have spoke already, and that it was conformable to the second, I am to shew afterwards, when I come to what the *Reviewer* calls my fourth Head.

I. To return then to the first of these, viz: the Law of Nature, what that requires is so well and so succinctly set forth, in a late *Essay* of an eminent Lawyer on that Subject, p. 127. that I cannot better express the Matter than in his Words. "After Property, says he, was introduced, and had gained a firm Establishment, the Matter of Succession could not be long neglected.

that Law of *Kenneth III.* speak nothing of what he had appointed for the Rule of Succession among Collaterals, I suffered myself to be imposed upon by them. But I now find, that our oldest and best Historian *Fordon*, in describing that Law, sets down the Rule of Succession to be observed, as well in the collateral as the descendent Line, as will appear afterwards.

" ed. The Death of the very first Man, who acquired
 " Property, must have given Occasion to the Question,
 " who was to succeed him? If his Will was declared
 " upon the Point, no Doubt could be that it was the
 " Rule. If the Estate was left *in medio*, without a Will to
 " direct the Succession, his Children, for whom he was
 " bound to provide, would naturally be suggested to
 " the Mind. This pointed out the primary Rule of Suc-
 " cession, that Children succeed *ab intestato*. But what
 " if there are no Children? 'Tis but following out the
 " same Rule, to pitch upon the nearest Relation. For
 " after a Man's Death, his Children or other Relations,
 " will be considered as having a closer Connexion with
 " his Effects than Strangers; and by a natural Transi-
 " tion of Ideas, the Property that was in the Deceast will
 " be readily transferred to his Kindred." To apply this
 to the Question in hand: As the *Reviewer* himself does
 not deny, that by the Law of Nature, first Children,
 and, failing them, his nearest Relations did succeed to
 the Person that died *intestate*, to the Exclusion of those
 that were more remote; it plainly follows, that as *Robert*
Bruce the Competitor was one Degree nearer in Blood to
 the last Possessor, whether *Alexander III.* or his Grand-
 daughter the Maiden of *Norway*, than *John Baliol*; he
 and he only, by that Law, had a just Title to the Crown.
 It is in vain in that Author to pretend, that that Rule did
 only take place in Goods or Possessions that were divi-
 sible, but not in those that were indivisible. For, as it
 is incontestable, that that Law of Nature made no Dis-
 tinction between Possessions divisible and indivisible, but
 that the Succession went the same Way, *viz.* by Proxi-
 mity of Blood in both, this Subterfuge can be of no
 Stead to that Author. The only Difference between
 these two Kinds of Possessions was, that the Succession
 to the former went equally to all that stood in an equal
 Degree of Consanguinity to the Deceast, whether old or
 young, Male or Female: But in the latter, the eldest Male
 was preferred to all the other Children, that were of the
 same Degree with him, and generally the next Male
 took place of all Females, tho' they stood in a nearer
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Relation to the Deceast than he. Nor could it by that universal Rule be otherwise, since the *jus representationis* (on which our Author's whole Scheme is built) was not (as I said) for some thousands of Years known in the World (a).

2. Come we next to consider the Rule of Succession established by the *divine Law*; and to be sure, as God is the Author of Nature, his Law, tho' afterwards promulgated, cannot but be conformable to it: And that it is so, we learn from his own express Words, *Numb. xxvii. 8—11. And thou shalt speak unto the Children of Israel, saying, If a Man die, and have no Son, then ye shall cause his Inheritance to pass unto his Daughter. And if he have no Daughter, then ye shall give his Inheritance unto his Brethren. And if he have no Brethren, ye shall give his Inheritance unto his Father's Brethren. And if his Father have no Brethren, then ye shall give his Inheritance unto his Kinsman, that is next to him of his Family, and he shall possess it: And it shall be to the Children of Israel a Statute of Judgment, (or, as it is express in the vulgate Translation, *sanctum lege perpetua*) as the Lord commanded Moses. Upon these Words, Ye shall give his Inheritance unto his Kinsman, that is next to him, the incomparably learned Grotius has this Annotation; *Nota, says he, Hebræo more patruos fratrum filiis præferri, ut propiores ei, à quo bona venerunt. Idem mos per Phœnicas in Africam venit.* And remitting us to his great Work, *de jur. bel. & pac. lib. II. cap. 7. § 24.* he tells us, that Custom prevailed of old among the *Numidians*, in *Arabia felix*, and in the *Taurican Chersonese*, and not long ago in the Kingdoms of *Fez* and *Morocco*: Adding in his Notes, that the same Custom obtained throughout all *Mauritania*, and the *Saracens* in *Spain*; and concludes, that he observed from their Histories*

(a) *Stair*, in his *Instit. lib. III. tit. 4. § 4.* is positive, that there is no Right of Representation in Collaterals, by the Law of Nature; and is even in a Doubt whether by that Law it ought to take place among Descendents. But he needed not to have been in any Doubt about the one more than the other: For Representation any Manner of Way was not known in the World for a great Number of Ages after the Creation.

stories, that the Kingdoms of *Mexico* and *Peru* followed the same Rule. He says further in the same § 24. that it was agreeable to the *Roman Laws*, *quonquam*, he adds, *eas interpretes aliò detorquent*. And he says the same of the *Roman Laws*, *ibid.* § 30. Nor can it be pretended, that this Law was prescribed to the *Israelites*, as peculiar to the Oeconomy of that Nation. For there is nothing in it which from the intrinsic Nature of the Thing, or the Circumstances of that People, could hinder it from being equally extended to all other Nations; as it undoubtedly did obtain in them all at the Time when this Law was given to the *Israelites*. It was certainly a *Judicial*, and not a *Levitical Law*, and one would be apt to think, that it should be as obligatory upon other Nations, as the Laws prohibiting Marriages within certain Degrees of Consanguinity and Affinity, are (by Protestants at least) thought to have a binding Force upon all Mankind to this Day. I will not however carry the Matter thus far, nor think it unlawful for a King or People (when some good political Ends are served by them) to introduce some other Laws of Succession, different from those given to the People of *Israel*; tho', at the same Time, it must be owned, that a great many of them have no other Foundation, but what arbitrary Custom has given them.

3. *Lastly*, As to the Rules of Succession established in *Scotland*, they also make directly for the *Bruce's* Right. In the first Period, besides that the *jus representationis* was not then known among us, it was impossible, in the Nature of the Thing, that *Balial* could have a better Right than *Bruce*. For the Constitution then was, that when the Son of the last King was Minor, or under Age, not (as *Buchanan* and our later Writers would have it) any one of the royal Family whom the People at random should think fit to chuse, but he only who, after that Minor, was nearest of Kin to the deceased King, and was himself of fit Age, should have the Reins put into his Hands.

Come we then to that new Law, or Constitution of *Kenneth III.* and we shall find it the very same that Almighty

mighty God had established among the *Israelites*. By *Fordon*, our most ancient and most creditable Historian, it is thus express'd; *Statuit igitur [Kennethus] omni consensu Principum; paucis primitivæ successionis fautoribus exceptis, ut Regi cuique decedenti de cetero filius aut filia, nepos aut neptis, seu lineæ collateralis frater aut soror, aut saltem quisquis alius Regi decedenti superstes sanguine proximus, succedere debeat, unius diei licet infans*. *Lesly* is more concise; for he contents himself with telling in general, that *Kenneth* caused the Law which debarred the Children of Kings when Minors, from the Government, to be abrogated. *H. Boece*, who loves to enlarge upon Things, represents the Matter in these Words:

Rege vitâ functo, proles virilis sexus natu maxima, filius neposve qualibet ætate constitutus, etiam posthumus futurus in regnum succedito.

Nepotem ex Regis filio prognatum, ei quem filia peperit, in hereditate adeunda presertio (a).

Eademque lege cum Regis nepote ex germano procreato, collato ad eum qui ex sorore natus est, agito (b).

Whether these additional Laws, with some others that he after subjoins, are framed like many other Things, out of *Boece's* own fertile Head, is uncertain: But however that is, they make rather for than against the Right of the *Brucean* Family. But I will not say so of the Account that is given of that Matter by *Buchanan*: For he, after he had told in the general, that by that new Constitution it was enacted, that when the Kings were taken away by Death, their Children should immediately succeed

(a) 'Tis strange that *Boece* should omit to mention *Daughters* and *Grand-daughters*, as if they (contrary to *Fordon's* express Words) were by that Law excluded from the Succession. But it is not to be wondered that *Buchanan* should not particularly speak of them, when he, a little after he had given us the Heads of that Law, declaims loudly against feminine Government, as he does frequently in other Places.

(b) It would seem, that *Boece*, in this last Part of the Law, uses the Word *nepos* in a different Sense from that in which he uses it in the preceeding Part; in the one for a *Grandson*, in the other for a *Nephew* or *Brother* or *Sister's Son*: For how can it be said with any Propriety of Language, that a Man begot his Grandson?

ceed them, whether of Age for Government or not, he a little after subjoins, that other Laws were then added, the first of which he says was, *Ut quemadmodum Regi maximus natu filius succederet, ita filio ante patrem defuncto, avo nepos subrogaretur*. This is not only not vouched by *Fordon*, or our other preceeding Historians, but I am persuaded could only then take place, when that Grandchild was next of Kin to his Grandfather, which really was the Case, when our *Malcolm IV.* and after him (who died without Issue) his Brother *William*, succeeded to their Grandfather *David I.* who left no other Children but their Father Prince *Henry*. For if the Grandfather had another Son surviving him, he, according to that Law of *Kenneth III.* which was made before Representation was introduced into *Scotland*, would undoubtedly have been preferred before the Grandchild. From this Law then of *Kenneth III.* which is upon the Matter (as I said) the very same that God gave to his own peculiar People the *Israelites*, we now see, that the Nobility, Freeholders and Community of *Scotland* had good Reason to affirm, in their Letter to the Pope, *That the divine Appointment, and the Succession of Right, according to their LAWS and CUSTOMS, had made Robert Bruce their Prince and King.*

The Objection the *Reviewer* makes to all this, is so long, tedious and perplexed, that it is hardly possible for me to follow him through all the dark Mazes and Disguises, into which he has involved the Matter: I shall therefore content myself with observing such Things as may seem any way material in what he advances against me. And

1st, He supposes, that the Law of *Kenneth III.* was designed to determine all Disputes that might possibly arise concerning the Right of Succession to the Crown. But in this he is very much mistaken: For the Design of that Law was not to settle Disputes of any Kind; but only to abrogate the Custom which had formerly obtained of secluding the next Heirs, when Minors or under Age, from the Throne. Under that Custom or Rule of Succession that took place before his Time, there

was no Occasion for any Dispute, which it, if duly followed, did not remove. For when the next Heir was under Age, there was no more Difficulty in knowing who should mount the Throne, (his nearest Relation, who was of an Age fit for Government, being by that Rule appointed to be the Person) than there is to know who is the next Agnate, or Tutor in Law, to a Pupil, for managing his Person and Estate. As to that, all was plain and clear. But the Custom or Law itself was otherwise wrong, and had been attended with fatal Consequences, by the Temptations that were thereby given to ambitious Men, of murdering those that stood in the Way of their coming to the Crown. To prevent these Evils was the only Design of that excellent Law of King *Kenneth*, who, excepting that one Alteration, allowed the Rules of Succession to go on as they had done before.

2. The *Reviewer*, proceeding on that false Supposition, says, "It would represent King *Kenneth*, and the "States of his Kingdom, as very destitute of Wisdom "and Foresight; ——— if when they had laid down a "Rule of Succession in the descendent Line, they should "have omitted to appoint how it should go in a Dis- "pute that might happen among Collaterals." This is such an Argument as that made Use of by a Popish Writer, for establishing the *Roman Pontif's* Title to Infallibility, viz. *Christus non fuisset vir discretus, nisi constituisset judicem infallibilem, i. e.* Christ would not have been a discreet, i. e. a prudent Man, if he had not appointed an infallible Judge for determining all Controversies that might arise in his Church. 'Tis not my Business to shew the Absurdity of such a Conclusion: But that of our Author is not a whit better: For by the same Way of reasoning he might infer, that all Kings or States should have long ago appointed such plain Rules or Laws, as of themselves should be sufficient for determining all Causes of whatsoever Kind, that might arise among the Subjects; and that there should never thereafter be Occasion for making any new Laws for that Purpose. But the Truth is, that Law of King *Kenneth*,

neth, (which is the same with that of God and Nature, as I have shewed) is such a Law as our Author desires. For it, if duly followed, was enough for determining all Questions that could arise concerning the Succession to the Kingdom, both among Descendents and Collaterals. For what can be more plain, than that upon a King's Decease, his nearest Relation, be they young or old, Male or Female, in the descendent or collateral Line, should immediately succeed him? Could King *Kenneth*, or King *Solomon*, or the wisest King upon Earth, foresee, and provide against what might afterwards happen, viz. that in after Ages there would be introduced into their Kingdoms some feudal Customs, and fictitious Rules of Representation, which should alter the Customs, that with respect to Succession had hitherto constantly been observed among them? Thus much will, I hope, answer the Pretence the *Reviewer* makes of King *Kenneth's* want of Foresight, if he did not provide as he would have him.

To confirm this his imaginary Notion, he adds; "Would any Man, *says he*, who understands the Laws and Customs of *Scotland*, be at a Loss to know what were the Meaning of a Gentleman's Disposition or Will, who should leave his Estate entire and undivided to Heirs whatsoever?" I answer, if there are particular Laws or Customs, which point out who this *Heir whatsoever* is, then no Man would be at a Loss to know him: But, if the Laws and Customs relating to that Matter have undergone many considerable Alterations from what they formerly were, or in some Cases are not so clear and explicite, as could be wished, then it can hardly fail, but that some Difficulties will arise in knowing who this *Heir whatsoever* is. This Author's *πρωτον Ψευδος*, or fundamental Error, is, that he takes it all along for granted, that the Law of Representation was universally received in *Scotland*, in the Time of King *Kenneth III.* i. e. near 800 Years ago, and that it took place among Collaterals to infinite, as well as among Descendents. But I have again and again shewed, that that Law was not thought of in *Scotland*, nor in many

other Countries of the World, in that King's Time; If then that Law of his is to be considered as a Will, or Settlement, determining how the Succession should go among the several Branches of his Posterity, it is obvious, that his Meaning must have been, that this *Heir whatsoever* should be the Person that shall be nearest in Blood to the last Possessor, not by Representation (which is at best but a *fiction juris*, and of which he or his States had no Notion) but by Nature and in Reality. Whence it invincibly follows, that if that Law of his was intended to be perpetual, as our Author would have it, and in Fact we know no other, with respect to the royal Succession, down to this Time, then his Will was, that *Robert Bruce* and not *John Baliol*, should in the Event that then happened, be the true and rightful Heir and Successor in the Kingdom.

The *Reviewer* leaving King *Kenneth's* Law, which he most groundlessly fancies to make for him, tho' I have demonstrated that it stands directly against him, he goes next to the Law of Nature and Nations, and after he has, with his wonted Confidence, affirmed, that it has nothing to do in the Matter, he *begs Leave* (as he expresses it) *to propose to me the three following Questions*.

First, says he, "I would gladly know, if Mr. *Ruddiman* thinks this is a more certain, regular and uniform Way of succeeding (as he, *i. e.* I say, with respect to Kingdoms, ought to take place) than the Constitution, the Laws and Customs of the Kingdom in question." To this I answer, That all I said upon the Head was, that in all hereditary Kingdoms the Rule of Succession ought to be *certain, regular and uniform*: But then I added, that that Rule was not to be taken from the Manners of Succession among Subjects, but ought to have a fixt Rule or Constitution of its own for that Purpose. For without that, as the Manners of Succession among Subjects were various and different from one another, and that so as one could not be a Rule to another, so far less could they be a Rule for a Crown. If there had been a settled Constitution of the King-

Kingdom appointing the Crown to go in the same Manner, that private Estates unentailed do now go with us, then that had been a good and a certain Rule of Succession, and in all Reason ought to have taken place. But (as I have often said and proved) since we had never any such Constitution, but the contrary, then all that our Author sounds his false Supposition upon, must with it vanish into Air or nothing. But to return back a little to the Law of Nature, and the Comparifon he makes betwixt it and the various Rules of Successions that by Law or Custom have been afterwards received, either in Kingdoms or private Estates, I add, that hardly one of these last can be so sure and uniform as it is. For what can be so certain, regular and uniform a Way of succeeding, as that which hath Nature for its Basis, and was, in Conformity to it, established by the great God himself among his own peculiar People? This Law is so uniyersal, that it admits of no Exception, and, if it is followed, nothing in the World is more easy to discover, than who the true Successor is. For what can be more easy than to know who are a Man's nearest Relations, and whether they are Male or Female? But when we leave that original Law, and bewilder ourselves with new Laws, founded on Representation, feudal Tenures, or the like, there cannot chuse but a great many Disputes will arise, especially in collateral Successions. Of this we have but too many Instances, of which that between *Bruce* and *Balliol*, and the Houses of *Lancaster* and *York*, (not to mention many other very fatal ones) which have occasioned not only fierce Contentions, but long and bloody Wars among the Competitors: All which would have been prevented, had sovereign Princes and others taken that great Law of Nature for their Directress and Guide. I will not say that Law was of such perpetual Obligation, so as to hinder, but that there might be some wise Reasons for deviating from it, and introducing other Laws different from or contrary to it. But till that is done, (which I still maintain never to have been done with respect to the Crown of *Scotland*) that Law of Nature, as it was the first and best,

best, ought to have been then (as it was ever after) followed and obeyed.

His second Question is, "Next, says he, I would beg
 " Leave to know in what Countries, besides *Scotland*,
 " the Law of Nature, considered as such, was at that
 " Time, or now is, the Rule of Succession to the Throne
 " or Sovereignty, especially where it differs from the com-
 " mon Laws of Succession to private Estates, indivisible
 " and unentailed, in such Countries?" To this I answer,
1mo, That my Argument does not require that I should
 produce Examples of Countries, wherein the Succession
 to the Sovereignty did proceed according to the Law
 of Nature, at the Time of that Competition or since.
 It is sufficient for my Purpose, that the Law of Nature
 was the Rule of Succession in any Country or Kingdom,
 at any Period of Time before that Event. And that it
 was so for some thousands of Years both in the Succession
 to Thrones, and to all Possessions, real or personal, what-
 soever, I have shewed above; as also that, bating the
 Case of Minorities, it was and could not but be the Rule
 in *Scotland* preceeding *Kenneth III.*'s Time: And finally,
 that it was the Rule in that Kingdom ever since. If o-
 ther Rules or Customs have prevailed in some Kingdoms
 before or since the Time of *Bruce* and *Baliol*, that does
 not affect *Scotland*, which being a sovereign and inde-
 pendent Kingdom, cannot be governed by any Laws or
 Customs but its own: And since that (which our Au-
 thor pretends) was none of them, my Argument stands
 as good as ever. But *2do*, I never said that the Law of
 Nature, with respect to Succession, was universally fol-
 lowed at that Time: But this I say, and have proved
 it above, that there were at that Time, and yet now
 are many Countries, in which the Succession to a
 Throne or Sovereignty, was and is according to the
 Law of Nature, as it is distinguished from the Law of
 Representation. In many Countries at this Day, at least
 long after that Dispute, the Law of Representation was not
 known, and then not it, but the Law of Nature must
 have been and is the Rule in that Respect. And *3tio*, It is
 not material in this Question, whether that Law of Nature
 was

was followed in other Countries besides *Scotland* at that Time; but whether in other Countries as well as *Scotland*, the Succession to a Crown differed from the common Law of Succession to private Estates indivisible and unentailed. And it sufficiently answered my Purpose, that I have mentioned several Countries, in which there are considerable Differences betwixt the Rules of Succession in the one and those in the other.

His third and last Question is, "That if the Law of Nature was in *Baliol's* Time the Rule of succeeding to the Crown of *Scotland*, and if some other Rule has since prevailed, which, he, *i. e.* Mr. *Ruddiman*, seems to grant, I beg to know at what Period, and by what Law or Constitution the Change happened?" To this I give a short Answer, that I am so far from granting it, that I absolutely refuse that ever there was any Change or Alteration made in the Rule of Succession to the Crown from the Time of *Kenneth III.* to that of *John Baliol*, or thence to the late Revolution. *Robert Bruce* claimed it by the Law of Nature, and all his Successors have by the same Tenure possess'd it to that Period. He indeed made some Laws concerning it, but (except that one, wherein he preferred his Brother Prince *Edward* to his Daughter Lady *Marjory*, for which I have accounted in my Answer, p. 156.) they were so far from abrogating that Law, that one main Design of them was more strongly to establish and confirm it.

Having answered these his Questions, and shewed, that some of them are ill founded, and that none of them make any Thing for his Purpose, I should proceed to what he says further upon that Head. But he must excuse me not to trace him so minutely. I had said in my Answer, p. 11. "That in all civilized, and (for ought I know) even barbarous Nations, Males in the first Degree of Consanguinity are preferred to the Government before Females." And then I propose a Question, "Why they should not likewise be preferred in the second, and so on in equal Degrees of Consanguinity? And concluded, that if Mr. *Logan*, or any other, can give me a sufficient Reason for a Difference, founded

"founded on the *intrinsic Nature of Things*, with
 "which alone I am now concerned, then I promise to
 "give up the Cause, and to pronounce with him in
 "favour of *John Baliol*." This Promise I shall adhere
 to; and it happens luckily for me, that I have the ablest
 Lawyers that have wrote on that Subject on my Side.
 See above, p. 17. But what says the *Reviewer* to this?
 He leads me a long Chace with his Doctrine of *Representa-*
tion, which tho' I should grant him, as it is a De-
 viation from the Law of Nature, it can go no further
 than the Laws and Customs of that Country in which
 it is received, have extended it; and where there are no
 such Laws and Customs, it can have no Place at all. I
 have shewed above, p. 19. that that Law of *Justinian*,
Novelle 118. which is the first that introduced it among
 Collaterals, went no further than the Grandchild, or
 third Degree of Consanguinity. And no Instance can
 be given in the Succession of our *Scottish* Kings, that
 ever one of them came to the Crown by Representation
 of any Kind. Nay, but it is hard, says the *Reviewer*,
 that one that is put in Hopes of a Crown, should be
 cut out of it by the casual Death of his Father; i. e.
 that if a King have two Sons, and the eldest leaving a
 Grandson, happens to die before his Father, that the se-
 cond Son should succeed him; or, in other Words, that
 the Uncle should be preferred to the Nephew. Howe-
 ver hard this may seem to be, yet we have many Instances
 of that Kind of Succession upon Record in some Coun-
 tries, and sharp Contests about it in others. *Charlemagne*,
 as is observed in the learned Essay abovementioned, pass
 by his Grandson *Carloman*, tho' come to Man's Age, and
 left the Empire to his second Son *Lewis*. See his Words
 p. 125 and 137. The great *Cujacius*, as I cited him be-
 fore, gives a famous Instance in the Kingdom of *Sicily*,
 where, by the Responses of the best Lawyers, the Crown
 was adjudged to the Uncle, and not to the Nephew. And
 this, says that Author, was agreeable to the Principles of
 the feudal Law; and adds, that they speak foolishly
 who judge otherwise: As does also *R. Choppin, de domi-*
nio Franciæ, lib. II. tit. 12. § 2—4. The very learn-
 ed

ed Jo. Bodin, in his Book *de republica*, p. m. 1144, & seqq. brings a great many other such Examples. I shall mention only one more, not taken notice of by those Writers, and which is the more remarkable, because it happened a little more than twenty Years before the Controversy we are upon, and was proposed as an Argument for Robert Bruce, by some eminent French Bishops and Doctors of the Laws (a), who were consulted upon the Matter. They assure us, that Lewis IX. King of France, commonly called the Saint, upon his passing to Tunis, ordained, That if his eldest Son should die before himself, not that Son's Son, but his own second Son should succeed. I forbear to repeat what I said before of private Estates and Fiefs descending the same Way in most of the Belgick Provinces and elsewhere, at this Day. I shall only add what is said in favour of the Uncle, by the above named Bodin, p. 1146 and 1147. where, after he had mentioned the Reasons urged in favour of the Nephew, he thus concludes; *Nec tamen patruī causa omnino deseritur à ratione, si quis ista subtilius subodorari völet, ac legem xii. sine fraude interpretari: hæc enim proximum quemque ad hereditatem invitat: at propius abest à patre filius, quàm nepos, qui fictione falsâ eadem persona cum patre mortuo censetur. Sed ut fictio in ceteris ferenda sit, non tamen æquum videtur, ut fictio veritate potior sit in alterius detrimentum. Nec patitur naturæ benignitas filios paternis opibus ac bonis spoliari, ut nepoti, qui ab avo longius abest, omnia tribuantur: id enim fieri necesse est, non modo in regni, sed etiam ducatus aut comitatus, aut feudi individui adeptione, propter illam quam diximus fictionem. Ac tantum abest, ut Romanæ leges filios à nepotibus disturbari patientur, ut non prius ad nepotes fidei commissâ perveniant, quàm si filii omnes invicem substituti mortui sint.* And he closes what he had said with this weighty Consideration, that that Rule of Succession ought especially

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to

(a) See Fordon, lib. XI. cap. 4. in the Edition of him now in the Press, who in the following Chapters 5 — 9. gives us the Judgment of the great Doctors of the Law in the University of Paris, and other Parts of France, all in favours of Robert Bruce.

to take place in a Kingdom, in which, as the right Government of it requires a Person of great Wisdom and Experience, so these Qualities are more readily to be found in Uncles than in Nephews (a).

But what shall we say of those whom the Reviewer calls *Heirs apparent*, who have a Right, as he expresses it, *in Reversion*, to the Crown, and for that Reason are dignified with higher Titles, and allowed larger Establishments than the other Children? Truly I have nothing to say of them, or to them, than what Horace said of old,

Vite summa brevis spem nos vetat inchoare longam,
and is to be said of all Hopes that depend upon future and uncertain Contingencies. For how oft do we see all such unexpectedly baffled and disappointed? No Hopes should be carried further than there is Ground for them. And he is a Fool that entertains vain Hopes, where there is very little or no Ground for them at all; which, as it was universally the Case for many Ages in former Times, so it is the Case with us in *Moveables*, as it is likewise in those Countries where, even with respect to what we call *real Rights*, Representation does not take place. I own indeed, that the eldest Son of a King, or that Son's eldest or only Son, may have some tolerable good Hopes of coming, by the ordinary Course of Nature, to the Throne, and may be brought up in a Manner suitable to his Rank, and the high Expectation he may conceive on that Account, and we pity him if he shall happen to be baulked and disappointed. But certainly neither *Dervegild*, nor her Son *John Baliol*, nor yet *Robert Bruce* his Rival, and far less *Margaret* the Grandmother of the one, or *Isabel* the Mother of the other, could justly entertain any Hopes of coming to the Crown in the Days of *Alexander III.* or his Grand-daughter the *Maiden of Norway*; from whom as they were so many Degrees of Consanguinity removed, so they never had any of these Titles, or large Establishments allowed them,

as

(a) The above named R. Choppin, *loc. cit.* says the same, *Esti igitur in patris locum nepos regulariter succedat, non idem est in Principatu, aut Imperiis, in quibus magis ad prudentiam attenditur, quam is qui annis major est majorem quoque habere existimatur.*

as *Heirs apparent* of the Crown, which our Author speaks of. From which it appears, that the long Flourish our Author makes on that Head cannot do him any Service at all.

His next Shift is, "That I lay too great Stress upon the Point of Time, at which the Throne happens to be vacant." I lay no greater Stress upon that Point than all the World does. For in all hereditary Estates, as well as Crowns, the great Question is, who is the *propinquior heres*, or next in Blood to him who was last seized and vested in it, and not to him who was the original Proprietor or Acquirer of it. It most frequently happens, and laying aside the Right of Representation, at least among Collaterals, would almost always happen, that one and the same Person will be nearest in Blood to both. But some Cases may occur, in which it may fall out to be otherwise. Thus my Uncle, or even Granduncle, (who yet may outlive me) stand in a nearer Degree of Consanguinity to my Grandfather, or any other of my Ancestors, that first acquired the Estate, than my Son does; And yet who can doubt but that my Son, as being my next Heir, should succeed me? This then being a fundamental Rule in the Succession to all Inheritances whatsoever, *Ut semper inquiratur* (says the great Sir Thomas Craig) *quis obijt ultimò vestitus & sasitus*; the Subterfuge the Reviewer has here Recourse to, concerning the Point of Time in which the Throne becomes vacant, can be of no more Advantage to him than the former. And I add, (which renders it every Way out of Purpose) that let him go as far back as he will in the Genealogy of the Kings of Scotland, and as far down as to the last Possessor, to whom Robert Bruce claimed Right to succeed; and it will be found, that he was one Degree nearer to every one of them, as well as to David Earl of Huntington, from whom his Title was derived, than John Baliol was.

From this also it will appear, how notional and frivolous the Suppositions are, which he makes upon that Consideration. That I may not seem to misrepresent him, I shall give them in his own Words, "Let us apply,

" says he, it, (i. e. what he had said before) to the
 " Case of *Bruce* and *Baliol*, and, as both of them claim-
 " ed the Crown only in virtue of their Descent from
 " *David* Earl of *Huntington*, we are to look upon their
 " Pretensions in the same Light, as if the said *David*
 " had actually been King. — Supposing *David* Earl of
 " *Huntington* then to have been King, as he had no
 " Sons, but three Daughters, *Margaret*, *Isabel* and *Ada*,
 " *Margaret* the eldest Daughter was his Heiress, and
 " would without Dispute have succeeded to the Crown
 " of *Scotland*, preferably to her two younger Sisters.
 " Supposing again that *Margaret* had lived long enough to
 " come to the actual Possession of the Throne, as she had
 " only two Daughters, whereof *Dornagilla* or *Derve-*
 " *gild* was the eldest, there is as little Room to dispute
 " that *Dervegild*, *John Baliol's* Mother, was the Heiress
 " apparent of the Crown, and ought to have succeed-
 " ed to *Margaret* her own Mother, preferably to *Robert*
 " *Bruce*, who was only her said Mother's Nephew, by
 " the second Sister *Isabel*.

What idle Suppositions are these? The common
 Proverb is, *Supposito quolibet, sequitur quodlibet*: And so
 it fares here with our Author. He supposes, that if *Da-*
vid Earl of *Huntington* had lived after the Death of
Margaret of *Norway*, he would have been King: And
 again, that if *Margaret* his eldest Daughter had lived to
 that Time, she would have been Queen: And that of
 Course first *Dervegild*, and then *John Baliol* would have
 succeeded. Who doubts it, when *David's* three Sons,
Henry, *David* and *John*, and *Thomas* the Son, and *Chri-*
stian the eldest Daughter of *Margaret*, (not the youn-
 ger as our Author has it) were out of the Way? But
 the Question is not, what might have been, but what
 actually happened. If such Suppositions are good for
 any thing, we may multiply them to infinite. If *Da-*
vid Earl of *Huntington's* three Sons, or any of them,
 had lived, and had Heirs, *Margaret* their Sister would
 have had no Title. If *Margaret* the Sister had died
 without Heirs, the Right would have gone to her youn-

ger Sister *Isabel*, and her Heir *Robert Bruce*. If *Alexander III.*'s two Sons, or his Grand-daughter had had Heirs, the Issue of Earl *David* would have had no Pretensions, &c. But what are all such Suppositions but so many Castles in the Air, and which have no other Foundation but what the *Reviewer's* idle Fancy has given them?

But, says he, if they are not granted him, "Any Person will observe, that this Scheme of Mr. *Ruddiman's* puts the eldest Branch of a Family upon a very precarious Footing, with respect to their Right of Succession;" *with a long Flourish to that Purpose*, "that the Right of Apparency, in the ordinary Course of Nature, is (if these his Suppositions are not granted him) to go for nothing, and the fairest Prospect of so dazzling an Inheritance, as that of a Crown, may be dashed in a Moment; not by any Fault in the Heir apparent or presumptive, who probably had been educated in a Way suitable to his high Expectations, but by the single Chance of his Father's or Mother's dying, perhaps only a few Hours before his Grandfather or Grandmother." We have shewed already, that whatever Prospect these of the descendent Line may have of succeeding to a Crown; yet those of the collateral Line, and that at so many Removes (which was the Case of the Family of *David Earl of Huntington*) from the last Possessor of the *Scottish* Throne, could hardly have any such Prospect at all, and far less be educated in a Manner suitable to such high Expectations. It would have been a most arrogant Presumption in any of the Progeny of that Earl *David*, to set themselves up as Heirs apparent or presumptive to the Crown, in the Time of the two last *Alexanders*, who each had Heirs of their own, and whose Prospect was much fairer and nearer than that of these others could be. But why calls he the Scheme he is so much displeased with, my Scheme, when, as I have shewed above, it is the Scheme or Rule of all hereditary Successions, for ought I know, in the whole World, that he or she only is the Heir who is
nearest

nearest of Kin (a), not to him who possibly might have lived longest, but to him who died last vested in the Possession? If this shall happen to dash the Hopes of them, who once might have some Prospect of succeeding, who can help it? The Lives of all Men are uncertain and precarious, and so must all the Hopes be that are built upon them; and accordingly as they shall happen to be longer or shorter than that of others, they must succeed or be disappointed. Since therefore the Principle I go upon, is not mine, but that of all Lawyers, and in all Countries, it plainly follows, that, as *Robert Bruce* was one Degree nearer, not only to *Margaret of Norway*, but also to *David Earl of Huntington*, than *John Baliol*, he ought to have succeeded her as her true and only Heir. And if the *Reviewer* will insist upon the Right of Representation, (which yet he cannot say did ever take place in *Scotland*, with respect to the royal Succession) that Pretence is cut off by the Right of Masculinity, as the *French* call it: For as no Reason from the Nature of the Thing can be given, why a Male in the second Degree should not be preferred to a Female in that Degree, as well as by the Law of all civilized Nations at least, he is preferred to her in the first, my Argument still holds good, that *Robert Bruce* should exclude *Dervogild* the *Baliol's* Mother, (from whom this her Son could only derive his Right) who stood in the same second Degree of Consanguinity with him.

But the strangest Thing of all is, that the *Reviewer* has fallen upon a Clinch, which he fancies will bring me to be of his Opinion. In my *Answer*, p. 9. in reckoning up the various Rules of Succession among us, and particularly how it went in real or immoveable Possessions

(a) I would not here be misunderstood, as if by the Words *nearest of Kin*, I always meant him that in Truth and Reality was so. Indeed before Representation got Footing in the World, he that was naturally, was also legally nearest of Kin to the Deceast. But after that *fictio juris* took place, the legal and the natural Heir sometimes happened to be different Persons: And that, because by this Fiction, the legal Heir, tho' more remote, is accounted the nearest of Kin, as being supposed to represent, i. e. to be the very Person, who, if he had been alive, would naturally have been the nearest of Kin to the last Possessor,

tions, I add, " That it is otherwise in Moveables, for
 " both Males and Females succeed equally in the same
 " Degree of Consanguinity, and thereby (which is
 " somewhat odd) the Children of the last Possessor that
 " happened to be alive, will exclude the Grandchildren
 " by those his Sons or Daughters that happened to be
 " dead." Upon these Words of mine [WHICH IS
 SOMEWHAT ODD] the *Reviewer* very artfully, as well
 as *oddly* would infer, that this Law, in my Opinion, dif-
 fers from the Notions I have in common with him of
natural Equity; and thence subsumes by a strange Fetch,
 that, according to my Notions of *natural Equity*, *John*
Balio had a better Right to the Crown than *Robert*
Bruce. But in this, as almost through this whole Dis-
 pute, he has palpably put a false Gloss upon my Words.
 For how could I have a Notion, that the Succession that
 went *per capita*, and not *per stirpes*, or that opened
 equally to those only that were equally related to the
 last Possessor, was contrary to the *natural Equity* he speaks
 of; when it is so well known, and he himself in so many
 Words acknowledges it, in his p. 389. *That by Nature all*
the Children a Man has, have an equal Title to his Goods
and Estate, the younger as well as the elder, the Female as
well as the Male; and so on, where these fail, Grand-
children, or other more remote Relations, would by the
Law of Nature be equally intitled to their Predecessor's
worldly Substance? 'Tis true, he there thinks to bring
 himself off with the Exception of *Subjects that are in-*
divisible, which he will have to go by Representation to
 the eldest Male or Female, who happen to have the
 nearest Propinquity to the last Owner. But whatever is
 in that, he will not say that *Moveables* are of that
 Kind, or that they could fall under that Exception. It
 is plain then, that if I knew what I was saying, I could
 not so much as dream, that the *Oddness* I speak of should
 have any Relation to Crowns or Sceptres, or any thing
 of an *indivisible* Nature, or that that Manner of Succession
 which had for so many thousands of Years obtained in
 the World, should be contrary to *natural Equity*.

But

But he will say, wherein then lies the *SOMEWHAT* *ODDNESS* I mention? I will tell him in a few Words. It lies, *1st*, in this, that that Rule of Succession in Moveables differs so widely from the other two abovementioned, relating to Heritages. I might have said the same of the different Rules of Succession in Heritages, as that where there is a Male it goes one Way, but where there are Females it goes another. Of both these Varieties Mr. *Home*, in his most accurate Essay on the Subject, takes particular Notice, and thinks them as *odd* as I do. On the Difference that is by our Law put between Males and Females, as to their Succession, he says, *p. 134.* "That it must at first Sight appear *whimsical*, and not readily to be accounted for. If the Right of Primogeniture was so universal a Principle, how came it to stop short, and not to obtain in every Case? And 'tis evident, where there are Daughters only, the Mind in tracing out the Line, descends to the eldest, as naturally as to the eldest Son, where there are Male-issue." And, speaking of the Difference between the Succession to Heritages, and the Succession to Moveables, which is, that Representation takes place in the one, and not in the other, he says, *p. 144.* "That this Rule of Representation, which he has before described in the Words of our Countryman *Craig*, is a very commodious Method of solving Difficulties. But however commodious, I will venture to say, it affords little Satisfaction to the Mind. For the Question still recurs, where is the Foundation for this Fiction? (*for so he and others always call it.*) Why should there be a Right of Representation in Lands more than Moveables? To say no worse of it, (*adds he*) it seems, in my Apprehension, to signify nothing but TO DARKEN, INSTEAD OF CLEARING, THE SUBJECT-MATTER." Thus he: And might not these two Manners of Succession, so different from one another, appear *SOMEWHAT ODD* to me, when we see they appeared no less *odd* to so eminent a Lawyer before me? But *2^{dly}*, There was another Reason which made me think that Manner of Succession with us in Moveables *somewhat odd*, viz. that, tho' we follow the

Roman

Roman-Law in a great many other Things, yet in this we differ very widely from it. For among that People, Heritages as well as Moveables, were divided equally among all the Children; and Representation took equally place in both. Besides, that Law (as I have often said) went no further than Grandchildren: And that some Lawyers carry it further down to other lower Degrees in the descendent Line, or extend it to any subaltern Degree among Collaterals, is only inferred by way of Consequence. *Grotius*, in speaking of Representation, which he calls a *vicaria successio*, and *substitutio in locum mortui parentis*, he says, *de jur. bell. & pac. lib. II. cap. 7. § 30. Rationes quæ ex legibus Romanis adferuntur ad hanc rem minus firmæ sunt: quod apparebit leges ipsas inspicienti. Sed hæc ratio optima est, quod in materia favorabili dictionum significatio extendenda est ad omnem proprietatem (a).* See also, what that great Man says a little before, concerning the Dispute that may arise between the Uncle and the Nephew, or between the second Son and the Grandson by the eldest; where indeed he is of Opinion, that the Grandson should be preferred in the lineal Succession; but says nothing if the like Case should happen among Collaterals. *Mr. Home*, in that his excellent Essay, has given such a rational Account, how the Rules of Succession came gradually to deviate from that which had for so many Ages before obtained in the World, that I cannot forbear setting it down. "A military Vassal, says he, p. 137. (and it appears by what follows, that he meant the same of a sovereign Prince) dies leaving Issue a younger Son, and a

I

Grand-

(a) He calls it here *materia favorabilis*; and a little above he says, that *natura ei favet*. But may I not venture, with all Deference to the Opinion of this great Man, to say, that Nature does not seem to favour the Rule of Representation, he speaks of, so much as he supposes? For it is generally thought, that Men have naturally a greater Affection to those that stand in a nearer Relation to them, than to those that are more remote, and consequently to their second and other Children more than to their Grandchildren. What seems to confirm this not a little, is, that before Representation obtained in the World, that Rule was generally followed, as being most agreeable to the Law of Nature; and that therefore it is not reasonable to think that Case favourable for one, which is unfavourable and detrimental to another, who, if Nature is alone to be regarded, calls for a Preference.

" Grandson by his eldest Son, the Doubt is whether the
 " Son or Grandson is Heir. The Son is undoubtedly
 " the nearest in Blood, and therefore, by the Law of
 " Nature ought to be preferred; and accordingly this
 " appears to have been the Law in the Days of *Charle-*
 " *magne*, whose second Son *Lewis* was called to the
 " Succession as lawful Heir, tho' *Charlemagne* had by
 " his eldest Son a Grandson of perfect Age, when the
 " Succession opened. On the other Hand, the Circum-
 " stances of the Grandson are to be considered. He is
 " born and perhaps educated with the Prospect of suc-
 " ceeding to the Estate, after the Death, first of his Grand-
 " father, and then of his Father: It cannot but be con-
 " sidered as a Hardship to be deprived at once of all his
 " Hopes, by the unexpected Accident of his Father's
 " Death before that of his Grandfather. Such are the
 " Circumstances that weigh against one another: And
 " therefore no Wonder to find the most sensible Wri-
 " ters taking different Sides in a Question so dubious.
 " Perhaps there is not one Question in Law, which
 " has afforded a greater Field, not only for Law-suits,
 " but for bloody and cruel Wars. The Historians of
 " *France* and *England* are full of Instances of this Kind,
 " And the celebrated Struggle about the Crown of *Scot-*
 " *land*, betwixt *Bruce* and *Baliol*, had no other Foun-
 " dation. *Baliol* was descended of the eldest Sister,
 " *Bruce* only of the second. But then it was urged in
 " Behalf of the latter, that he was one Degree nearer to
 " the common Stock than his Competitor, and conse-
 " quently nearer in Blood (a). This Matter is now set-
 " tled, and has been for Ages (b) in favours of the De-
 " scendants

(a) The learned Author will forgive me to suggest, 1st, That the
 Dispute he mentions before, did run between Persons in the Line de-
 scendent: But that between *Bruce* and *Baliol* was in the collateral Line,
 which makes a considerable Difference, as he in the next Paragraph
 shews. 2^{dly}, He omits to take notice of what was of the far great-
 est Weight in that Controversy, viz. Masculinity, or the Prerogative of
 his Sex, which of itself gave *Robert Bruce* the Preference to *Dervigild*,
 and consequently to her Son *John Baliol*.

(b) For Ages] not so many, I believe, as is commonly imagined:
 For it was not fully settled in *England* till *Edward IV.* mounted the
 Throne,

"scendents of the eldest. But it was, in some Measure,
 "reckoned a doubtful Case, even so late as the Time
 "when the *Regiam majestatem* was composed, as will
 "appear from the 33d Chapter of the second Book (a)."
 "It has been disputed (*continues he*) whether the
 "same Rule ought to hold in the Succession of Collate-
 "rals. The Ground of the Doubt is, that as a Man is
 "never without Hopes of Issue, none of his Collaterals
 "can be born or educated with the Hopes of succeed-
 "ing to him. This Circumstance being removed, which
 "preponderates in the former Case, it may be thought,
 "that there is nothing to weigh against the Right of
 "the nearest Agnat. Upon this Ground it was, that
 "after the Death of *Henry III. of France*, the League
 "set up the Cardinal of *Bourbon* as Heir of the Crown,
 "against his Nephew the King of *Navarre*, afterwards
 "*Henry IV.* For tho' *Henry* was the Son of the elder
 "Brother, yet the Cardinal, the younger Brother, was
 "one Step nearer to the common Stock. It is extremely
 "probable, had Cases of this Nature first occurred, that
 "the nearest Agnat would have been preferred: And it
 "is equally probable, had this once been established
 "as the Rule, tho' occurring only in collateral Successi-
 "on, that it would have been applied to the Case of
 "Descendents, without regard to their Hope of Succes-
 "sion. But Instances first occurring, as readily would
 "happen, in the Case of Descendents, the Decisions gi-
 "ven in favours of the eldest Son's Descendents, esta-
 "blished a Sort of general Rule, which was afterwards
 "applied to the Case of Collaterals." See more to the
 same Purpose in that Author's Introduction to his ex-
 cellent Essay. My Reader will forgive me that, the

Throne, anno 1460. and never in Scotland to this Day: So far from it, that
 by the Law of *Robert II.* the second and other Sons, and their Heirs-
 male, are preferred to the Daughters of the last Prince regnant.

(a) This besides several others, is with me no weak Proof, that the
 Book of the *Regiam Majestatem* was composed before the Dispute be-
 tween *Bruce* and *Baliol*, and consequently long before the Time of *Da-
 vid II.* in which that learned Author will have it to be compiled, in
 his first Essay of the Introduction of the feudal Law, p. 25, &c.

Point I have been upon being of so great Moment for supporting the Cause I have undertaken, I have dwelt longer on the Discussion of it, than otherwise I inclined.

S E C T. VII.

WE are now come to my fourth Argument, as this Author numbers them, tho' it is the last I make Use of. It is taken from the *feudal* Law, according to which I say, that in a Competition among Collaterals the Right to the Crown would go to *Robert Bruce*. The Reply which the *Reviewer* makes to this is little else than a Repetition or Abridgment of what that vapouring Gentleman, the Author of the so often mentioned Pamphlet, whom he and Mr. *Logan* all along follow, has said upon the Head: And concludes, that since *I have not attempted to answer what the said Author has wrote on that Subject, he will proceed to my other Arguments.* But soft and fair! Was it not an *Attempt* at least to answer what is said by the Pamphlet-writer, that I had the Judgment and Authority of three great Lawyers confirming what I had said, viz. *James Cujas*, *Sir Thomas Craig* and *Sir James Dalrymple*; the first the most eminent of all Countries, the second of ours; and the third of a more than ordinary Knowledge in the Laws, but more especially in the Antiquities of our Nation. Tho' one might have Reason to think, that the Authority of such great Men was sufficient for establishing what I had said of the *feudal* Law, yet, as he seems to call upon me to do it, I shall enlarge a little further upon the Head, and at the same Time remove that Heap of Rubbish, which the Pamphlet-writer and his *Hyperaspistes*, the *Reviewer*, have thrown upon it. And,

1. To disparage the *feudal* Law, he calls it the Law of the *Goths* and *Vandals*, who are reckoned to have been a very barbarous People: Whereas most Lawyers agree, that it was first introduced by the *Lombards* in *Italy*, who were a People, at that Time at least, of much more humane and polite Manners. *Vulteius*, and some other Commentators on that Law, do not stand to give it a higher

higher Original, and carry it as far back as the lower Roman Empire. But whatever is in that, it is no small Evidence of its Excellency, that it is now become, as I said in my Answer, a Kind of a *Law of Nations*, being received in most, if not all the Kingdoms of *Europe*; and there are who write, that it has got some Footing in the *Turkish Empire* itself.

2. As a Specimen of his Wit and Ingenuity, the Pamphlet-writer, p. 13. banterers us with the Word *FEU* or *FEU*. "Now, says he, if *Scotland* was a *Feu*, as these Gentlemen would make it, pray let them tell us of what Over-lord it held, and what was the Nature of the Holding?" And, to complete his Raillery, he subjoins this Foot-note, "Let it be remembred, says he, that these very People, in the Dispute about the Homage, assert the Independency of *Scotland*, and maintain that it was no *Fee* of *England*." This is a witty and shrewd Objection: But it happens luckily, that I have the great Sir *Thomas Craig* (who was aware of such trifling Chicanery) to answer for me: For he speaking to the Question, Whether Kings can by Testament institute any other Heir or Successor than the true one? has these Words, *Feud. Lib. II. Dieg. 1. § 16. Sed, inquiet aliquis, Regna non sunt feuda. Rectè sanè, quia Reges de nullò tenent, nec dominum agnoscunt, nisi quæ sunt regna quæ clientelarem fiduciam debeant. At neque regna omnino à feudorum nomine excludi possunt, quorum omnium Deus opt. max. directus est dominus, de quo Reges sua regna tenent, & ad servitia eidem domino suo servanda & præstanda tenentur. — Et si respectus habeatur ad vassallos, domini feudorum directi sunt; & in usibus feudorum consuetudines regni numerantur. Ut cunque est, iisdem successionis legibus regna subjecta, tenent omnes qui de jure feudali scripserunt.* This I hope will satisfy that Author's bantering Question, If *Scotland* was a *Feu*, as these Gentlemen would make it, of what Over-lord did it hold, and what was the Nature of the Holding? These Gentlemen make it no otherwise a *Feu*, than *Craig* has made it, i. e. that it is a *Feu* holding of God only; and the Tenure of its Holding

was.

was and is, that the Possessor of it should own him for his great and immediate Superior, and accordingly pay him all due Homage and Service. This is certain that every King, be his Throne never so highly exalted, has some Superior or other :

Omne sub regno graviore regnum est,
says the Tragedian (a). And it is somewhat odd (if I may venture again to use that Phrase) that these Authors, who will not allow the Rights of Kings to be divine, and derived immediately from him who is the great Superior and Lord over all, have yet found out for them *human Superiors*, i. e. their own *Subjects* and *Vassals*, to whose sovereign Majesty, *inverso naturæ & rerum omnium ordine*, they must veil their Sceptres, and humbly pay Homage and Obeisance; and will not, when they take it in their Heads, allow human, i. e. feudal Customs to direct the Manner of their Succession.

3. "Further, *adds he*, let them explain how the Customs of other Nations either could or should have regulated the Succession to the Crown of *Scotland*, and make it run in a Channel contrary to the Laws and Customs of the Country." All this proceeds upon two false Suppositions. 1st, That these feudal Customs were only the Laws of other Countries, and not that of *Scotland*. And 2^{dly}, That the one were contrary to the other. For, as to the first, tho' there was a Time, when these feudal Customs were not the Customs or Laws of *Scotland*, any further than they were agreeable to moral and natural Equity : Yet after they were introduced into *Scotland*, and made the ordinary and stated Laws in it for Possessions of all Kinds, and for the Rules and Manners of Succession to them, (as certainly they were a good Time before that famous Competition happened) they then became the Laws of *Scotland* to all Intents and Purposes, as much as if they had been its own original

(a) Seneca in *Thyeste*, and Horace yet more directly,

Regum timendorum in proprios greges,

Reges in ipsos imperium est Jovis :

Which *Buchanan*, with the Substitution of *Jove* in place of *Jovis*, has thought a just Paraphrase upon the first Verse of the 82d Psalm, *God standeth in the Congregation of the Mighty : He judgeth among the Gods,*

ginal Laws, and established by the highest Authority in it (a). Before the Laws of the xii. Tables were brought from *Greece*, they had no more Authority in the *Roman* Republick, than in any other Parts of the World. But when they were adopted by that People, and made the Foundation of all their Laws, they became as much binding upon the People of *Rome*, as they were or had been among the *Grecians* themselves. But 2dly, It is no less false, that these feudal Laws make the Succession run in a Channel contrary to the Laws and Customs then received in *Scotland*. For these feudal Laws having now become the Laws of *Scotland*, the Rules of Succession it prescribes, must be the Laws by which it must be regulated in this Kingdom: Unless some other Laws or Customs have been afterwards introduced contrary to them. Some such Customs, I confess, have gradually crept in among us, with respect to the Conveyance of private Estates and Possessions, different from those of the feudal Law, which yet may justly be reckoned rather *Corruptions* than *Improvements* of it. But (as I have often said) there is no Ground for pretending, that any such Alterations were made with respect to the royal Succession.

4. "But besides, says he, they will remember, that
 "even the feudal Law is not so clearly on their Side of
 "the Question, as they would seem to intimate. Sir
 "Thomas Craig, tho' he declares for their Opinion, yet
 "candidly owns, that the two great Lights (as he terms
 "them) of the feudal Law, *Gerard* and *Obert*, differ.—
 "And indeed he himself delivers his Opinion with an
 "unusual Modesty and Diffidence. And considering that
 "he

(a) The great Sir Thomas Craig, who thinks the feudal Law was introduced into *Scotland* before the Time of *William* the Conqueror, in *Lib. I. Dig. 4. § 1.* shews how much it had become the proper Law of this Kingdom before that Competition happened, in these Words, *Hoc jus feudale, hujus nostri regni proprium & peculiare jus esse, & ad quod in rebus dubiis decidendis sit recurrendum, quoties de rebus immobilibus, id est, de hereditatis acquisitione vel amissione agitur, contendo, & in hoc opusculo verissimis rationibus me probaturum recipio.* And then adds, That he would have those who were of a different Opinion, to suspend their Judgment till he shall have produced such Things as will confirm that his Proposition.

“ he wrote under the Reign of a Monarch peculiarly
 “ fond of hereditary Right, and from whom he had re-
 “ ceived distinguishing Favours, and that he introduces
 “ it in his Treatise of Homage, where it evidently tends
 “ to the strengthening of his Argument, it is a Wonder
 “ he says so little about it, and shews us, that he was
 “ not very positive in his Opinion.” Here are so ma-
 ny Things huddled together, that we must take them by
 Parcels: And I shall shew, that not so much as one Ar-
 ticle of them is consistent with Truth.

(1) He mistakes the Question betwixt us, which is not,
 what was Sir *Thomas*’s Judgment as to the Main of the
 Controversy between *Bruce* and *Baliol*, but whether, in
 his Opinion, *Bruce*’s Claim was well founded according
 to the feudal Law. On the first of these Sir *Thomas*
 speaks indeed very modestly: The Reason whereof most
 probably was, that *Bruce*’s Claim was not agreeable to
 the Custom that was afterwards introduced into *En-
 gland*, in which Representation seems to be extended to
 infinite, in the collateral as well as the descendent Line.
 This, that he might not give Offence at that critical
 Juncture, when Queen *Elisabeth* neither had nor would
 declare her Successor, he was not willing too particular-
 ly to meddle with: And that, I suppose for the same
 Reason, that Sir *George Mackenzie*, in his Treatise of
the lawful Successor (as I observed in my Answer (a),
 p. 328.) did avoid setting down the Act of Parliament
 of *Robert II.* concerning the Succession, tho’ he had pro-
 mised before in his Treatise to do it. But as to the o-
 ther Point, that *Bruce*’s Claim was well founded by the
 feudal

(a) And for that Reason it seems likewise to have happened, that
 tho’ this Author, in that his Book of Homage, chap. 29. p. 366. remits
 us for what he has said on that Controversy to his 2d Book *de feu-
 dis*: And in his Book *de feudis* itself, Lib. II. Dig. 14. § he tells
 us, that he has treated at large on that Controversy, Lib. I. Dig. 6.
 Yet I do not find, that either in that Place, or any where else in that great
 Work, he has entred into the Merits of that Cause at all. For all that
 he gives us in that Dig. 6. Lib. I. § 3. is only setting down the
 Words of the feudal Text, which we have here, without making any
 Application of them to the Case of *Bruce* and *Baliol*; which makes it
 highly probable, that for the Reason I have mentioned, he has thought
 fit to cancel what he had before wrote on that Head.

feudal Law, Sir Thomas is as positive as any Man can be; And to prove this, we need only to produce his own Words in that his Treatise on *Homage*, which (as Mr. *Ridpath*, cap. 29. p. 364—366. has translated them) are these, "I appeal them also to the feudal Law itself, which was at that Time tenaciously observed by the noblest Kingdoms in Europe. I shall here cite one Text, which agrees so well to this our Hypothesis, that nothing can be more like. The Words of the Text are these; *The like if any Man be invested in a Fee, so that it descend upon Women, and leave only two Daughters, of which the one has a Son, and the other a Daughter, whether after their Death, the Male ought only to have the Fee? According to Gerard, the Male only: Obertus on the contrary: And on the other hand, if he leave Sons.*" And then after having stated the Case between *Bruce* and *Baliol*, he adds, "In this Question the two great Lights of the feudal Law, *Gerard* and *Oberi*, are opposed to one another. But the Opinion of *Gerard*, that the first Male is to be preferred, is not only confirmed by other Places. as well of the civil as feudal Law, but also by the Suffrages of all the Interpreters; *Baldus*, *Alvarottus* the President, and the Moderns, *Hottomannus*, *Duarenus*, *Baro*, *Sehonerus* and *Cujacius*; nay and *Hortensius* himself does in other Places approve of the Opinion of *Gerard* as the truest." Thus he; and what can be more positive than his Words are, or what can any Man desire to be said further on the Head?

(2) As to what he says, "That *Craig* wrote this under the Reign of a Monarch, peculiarly fond of hereditary Right;" signifying that he thereby intended (contrary to what were his real Sentiments) to ingratiate himself to that Monarch: I answer, 1st, That, if it is true, that (as this Author has said before) Sir Thomas delivers his Opinion with an unusual Modesty and Diffidence, that Monarch owed him but very small Thanks upon that Score. But 2^{dly}, The whole of this is without any Foundation: For that Monarch, i. e. *James VI.*'s Right to the Crown of *Scotland*, was then past all Doubt; all that could lay any Manner of Claim to it, being long be-

fore dead, or having given up all Pretensions to it. As to the Crown of *England* (with which that famous Controversy had not the least Connexion) King *James* had but too good Reason to insist upon his Right to it, when several Treatises had been wrote against it, as particularly that of *Doleman*, or *Parsons* the Jesuite, whom *Craig* has confuted in a Book purposely wrote on that Subject. And what King is there, that will not strenuously maintain his Right, when it is disputed and called in question? But had *Craig* been biased in the Matter, which is not readily to be supposed of so good a Man, yet, I hope, that Author will not say so of these other great Lawyers, whom he cites, and who wrote before him, and were under no such Temptation. And if these are not sufficient, I can furnish him with a great many more, who are all of the same Opinion (a).

(3) Neither is it true, that Sir *Thomas Craig* received any *distinguishing Favours* from King *James*. So far from it, that when it might have been expected, that so eminent a Lawyer, the most learned in his Profession that was then in this Kingdom, or perhaps since, should have been promoted to the Bench; yet we do not find, that he had that or any other Honour bestowed upon him by that Prince, during his whole Life; unless it was that his Majesty would have him to be called a Sir *Thomas* or Knight; which Title however he never accepted or assum'd.

(4) Lastly, as little is it true, that what *Craig* says of the *Bruce's* preferable Right tended to strengthen his Argument. For, at the Time of the Competition, both the *Bruce* and the *Baliol's* Title stood as to the Homage on an equal Footing, both they, as all the great Men of the Kingdom, being by the irresistible Force and Terror of the Arms of the King of *England*, compelled to own him for the supreme Lord both of it and them; there was no Difference between them, nor was there any thing that in that Respect should move that King to prefer the one to the other. The only Thing that I can think

(a) Such are these cited by *Herm. Vulteijs de feud. Lib. I. cap. 9. § 71. viz. Jo. Tho. Marinus. Franc. Curtius jun. Jo. Schmedewinus, Ludolph. Schradereus, Jo. Wilb. Forster, Alex. Tartagnus, Jo. Ant. Rubens, Carolinus Ruinus, Rolandus à Valle, Jac. Menochius, &c.*

think of, that might influence that haughty and ambitious Monarch to pass that unjust Sentence, (for so I believe, and will always so call it) was, that he looked on *John Baliol* as the weaker Man, and of less Interest in the Kingdom than *Robert Bruce*, and so the less able to oppose the Design he had in view, of bringing the Kingdom of *Scotland* under his own immediate Dominion. That which inclines me to have such a Thought, is, that that Monarch's Grandfather had mounted the Throne of one Kingdom, and his Grandson claimed that of another by Titles quite the reverse to that by which he gave the Kingdom of *Scotland* to the *Baliol*. 'Tis true, that Sir *Thomas* (as this Author takes care to observe) falls into the vulgar Error of making *Bruce* refuse to swear to *Edward*. But that may make something against the Homage, but does not any way affect either the *Bruce* or the *Baliol's* Title, which was much the same whether *Scotland* was a Liege-fee of *England* or not.

I have the longer dwelt on these Things, not for any great Importance that is in them, but to let my Readers know what unreasonable Antagonists I have to do with, who move every Stone, and advance all Topicks they can think of, right or wrong, to buoy up, if possible, an otherwise desperate and sinking Cause.

There is only one Thing more to be taken notice of on this Head. It is a Citation taken from the same Sir *Thomas Craig's* Book of the *Succession*, &c. chap. XV. p. 373 and 374. wherein the *Reviewer* has blended two different Paragraphs into one. In p. 373. says that great Man, "In a Question about the Succession to the Crown of *England*, the Determination ought to be according to the Laws and Customs of *England*." And in p. 374. subsuming, on that Principle, he says, "There can be no Room for the Children of a second Daughter, in such Things as admit of no Division, or cannot be shared, as long as there are Children of the eldest Daughter." All this is true with respect to *England*, about which the Contest betwixt *Craig* and *Doleman* is wholly taken up; it being (as was then, and since that Time thought) a fixt Rule in that Kingdom, that the Succession should

go in the Manner he has described, from the Days at least of *Edward IV.* But what Inference can thence be drawn to what were the Laws and Customs of *Scotland*, with respect to the regal Succession, at the Time of the above Competition; which I have shewed to have been then and ever since, very different from those of *England*? This is what the Philosophers call μεταβαλλεῖν εἰς ἄλλο γένος, and to make the Laws of one sovereign Kingdom a Standard to those of another as sovereign and independent as itself; which is no more reasonable, than that both should be obliged to speak the same Language, wear the same Cloaths, or pay the same Taxes.

S E C T. VIII.

WE are come at last to what the *Reviewer* calls my fifth Head, and which I again own to have chiefly determined my Judgment in this Dispute. He divides it into two Branches. The first is, *That two Kings, in case their own Issue should fail, held Robert Bruce the Competitor for their next true and rightful Heir.* The second is, *That the Clergy, Nobility, Barons, Freeholders, and whole Community of Scotland, did again and again, in the most solemn Manner, declare, that the true Right to the Crown did always belong to, and reside in the Person of Robert Bruce the said Competitor; then in his Son Robert Earl of Carrick; and lastly in his Grandson Robert I. of ever glorious Memory.* These two Arguments I maintain to be of such mighty Force, that there is no evading of them. They ly as a dead Weight upon the *Reviewer*, and those others engaged in the same Cause. But, as the Poets feign of the Giant *Typhæus*, who was for his Impiety thrown under Mount *Ætna*, that tho' he struggled hard to shake off the grievous Load, yet he was able to do no more than to raise Earthquakes under it, and to belch out Flames at its Top; So these Authors may indeed put the World into a Combustion, and, as they constantly do, vent their Fury and Spite against the Posterity of that heroick Prince, especially those of the *Stewart* Family; But they can no more shake off the

the

the Evidence, that these Arguments give of his Right, than that Giant could get free of his immense Burden. But,

Nil mortalibus arduum est.

There is nothing that some Men will not attempt; as will appear by the Reply the *Reviewer* makes to all this, who not like a Giant, but another *Proteus*, puts himself into all the various Shapes he can devise, in order not directly to grapple with, but elude the Force of what I have said. How he has succeeded, is what I am next to take under Consideration.

To begin with the first, *viz.* the Declarations of the two last *Alexanders*, especially the former of them, in which it is expressly said, *That he held Robert Bruce, failing Issue of his own Body, for his right, i. e. true and lawful Heir, &c.* he answers,

1st, "That *John Baliol* was much in the right, when he took no notice of these Affirmations of Lord *Robert*, because his Title to the Crown did by no Means depend on the Opinions, or rather Inclinations and private Affections of the two preceeding Kings, tho' they had been proved." Here he sets out with a manifest Untruth. For *John Baliol* (tho' he would fain have slur'd them over) yet did take notice of these Affirmations; and the Answer he makes to them is a very silly one, *viz.* *That both the Alexanders had left Heirs that succeeded them*: As if Lord *Robert's* Right was not the same after these Heirs failed, as if they had never existed. A little below he calls that Assertion of Lord *Robert* an *ipse dixit*; which is no less false. For he added, *That there were many Persons yet alive, who could bear Witness to the Truth of what he had said.* But *John Baliol* did not think fit to put the Matter upon that Issue.

Next, he will have the Declarations or Deeds of these Kings, and the Assent given to that of the former, as to the Point of Right, by the great Men of the Kingdom, to have proceeded, not so much from their Opinion and Judgment in the Case, as from the private Affection they bore to Lord *Robert*. What is this but to give

give the Lie to both these Kings, and the great Men that joined with them in the same Opinion? Do not their Words bear, that in the supposed Event, *they held Robert Bruce for the right Heir?*

And this is sufficient to overturn what the *Reviewer* adds immediately after, as it turns upon that false Supposition; "The Crown of Scotland (*says he*) was not "to be bequeathed by the Will or Appointment of "the last Possessor." In this I heartily agree with him: But if the Crown is a Thing unentailed, (as our Author will always have it to be) and is to descend the same Way as all private Estates that are not entailed do; what should hinder the present Possessor to appoint how the Crown should go after his Death, by Testament or otherwise, as he shall incline? For it is certain, that the Possessors of private Heritages can do that and much more. But the Truth is, that neither these two *Alexanders*, nor any other of our Kings, did ever intend, or thought they had it in their Power, to dispose of the Crown after that Manner. All that appears to have been done by these two Kings, was, (in order to prevent, if possible, Disputes that might afterwards arise) to declare before hand what was their Judgment in the Matter: Which was the more proper to be done on these Occasions, as the Case might seem dubious, if the supposed Event (as too fatally it did) should come to take place.

As to the preferring of *Robert I.*'s Brother Lord *Edward* to his Daughter the Lady *Marjory*, which this Author here mentions as an Instance, *that our Kings in those Times did not pay so sacred a Regard to the lineal Succession, as Mr. Ruddiman would have us believe:* I thought I had so fully accounted for that Matter in my Answer to Mr. *Logan*, p. 156. that I could not think, that any Person of common Ingenuity would again cast it in my Teeth. But I must further observe, (to shew how unreasonably I am dealt with by this Author) that that was done not by King *Robert*'s single Authority, but by that of a full Parliament in Conjunction with him. And I never denied but that a lawful King and Parliam-
ment

ment may, on weighty Considerations, pass over the next immediate Heir, and give the Crown to another. What these Considerations were, is express in that Act. And I put it to this Author, if ever a more weighty Consideration happened in the World before, that of the late Revolution not excepted. This last had for its Reason the Danger our Religion was in, which yet, if it was solid and real, as was that of the primitive Christians, no King on Earth could take from us. But the Foundation of that other Act was, whether without such a wise Provision, we should be a Nation or not; we being otherwise upon the Point of being intirely swallowed up by an enraged and bloody Enemy, vastly superior to us in every Respect. But why should I speak of this, when *Marjory*, who is called in that Act King *Robert's* apparent Heir, did not only give her express Consent to it, but also confirm it with a solemn Oath, and append her Seal to it? without which it would seem, as I said in my Answer, that the King and his Parliament did not think this their Deed would have been valid. Tho' our Author will not allow Kings to dispose of their Kingdoms, yet he will allow them and their next Heirs, to abdicate the personal Right they have to them. And was there ever a more voluntary and express Abdication than the Lady *Marjory* did here make of her Right to the Succession? We had two such Abdications in our Time, viz. those of the late Kings of *Spain* and *Sardinia*, and there are many such like upon Record in former Ages. But no one, except this Author, will say, that any Interruption was thereby made in the true lineal hereditary Succession.

Another Instance the *Reviewer* pretends to give in the Reign of this *Robert I's* Son and Successor, *David II.* "We shall find, says he, that this *David* made "as light of the hereditary Succession as his Father King "*Robert* had done. For he did not only shew his private Inclinations to set aside from the Succession to "the Throne *Robert Stewart*, the Son of his eldest Sister by *Walter* great Steward of *Scotland*, and to substitute in his Place *Alexander*, the Son of his youngest

" Si-

" Sister, the Earl of *Sutherland*; but he made a publick
 " Deed of it, and got the Nobility to swear to *Alex-*
 " *ander's* Succession, in case of his own Death without
 " Issue. And the Reason, *adds he*, which our Histori-
 " ans give for this Alteration, is, that *Robert* had behav-
 " ed in a cowardly Manner at the Battle of *Durham*."
 This the *Reviewer*, to shew his impotent Malice against
 that Family, takes Pleasure to dwell upon; and after he
 has told us, that the *Decease of that Alexander, the*
Earl of Sutherland's Son, which happened soon after,
hindred that Act of King David from taking Effect, he
 concludes with this ironical *Epiphonema*; " So near, says
 " *he*, was the Nation to the being deprived of the
 " Reigns of the House of *Stewart* altogether." And
 was it not a very unlucky Thing, that ever that wicked
 Race should have come to the Throne, which has so long
 retarded the glorious Reign of the Saints in this King-
 dom, and the Halcyon Days, which, since they were laid
 aside, we have enjoyed!

But, alas, the whole of this Story is nothing but a pure
 Fiction, as are many others in *Fordon's* Continuator, and
 his servile Followers, *Boece* and *Buchanan*, from whom
 the *Reviewer* has taken it. *Andrew Winton, John Major,*
Lord Ormond, Bishop Leslie, and others speak nothing of
 it. *Dr. Abercromby, Vol. II. p. 153, &c.* has furnished
 us with such strong Reasons to the contrary, as render
 the Thing infinitely improbable: But he has omitted, or
 very slightly touched upon one, which not only with
 me, but with every rational Man, will amount to a De-
 monstration of the Falshood of that Story; and that is,
 that it gives a flat Contradiction to no fewer than three
 Acts of Parliament, viz. one in the Year 1315; an-
 other anno 1318, and a third anno 1328, all sworn to and
 ratified in the strongest Manner, that it was possible for
 the Clergy, Nobility, &c. of the Kingdom to do. In
 the first, tho *Marjory's* Uncle Prince *Edward*, is prefer-
 red before her, yet she is not absolutely excluded; but
 it is appointed, that failing Male-issue of her Father and
 said Uncle, the Crown should descend to her and her
 Heirs, and consequently, as she had but only one Son,

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Robert I. of the *Stewart* Family, he by that Act, so solemnly sworn to as aforesaid, had upon the said Failure the sole Right of succeeding to the Crown, as he afterwards did. The second is yet more explicate; for it having been made after her own Death, and that of her Uncle Prince *Edward*, who left no lawful Male-issue, and when her Father had yet no Son, it is therein expressly provided, that if her Father should leave no Male-issue, (which yet happened otherwise) that her Son *Robert Stewart*, tho' then not two full Years old, should succeed, and has Tutors appointed for him on that Account. The Originals of these two Acts are yet extant: But the third is only mentioned by *Fordon*, which we cannot but suppose to be to the same Purpose, saving the small Difference that *Robert I.*'s having now a Son *David*, a Boy of about six Years of Age, would make in it. Now as the two former of these Acts were solemnly sworn to as above, and we have Reason to believe the same of the third, can it be imagined, that the Clergy, Nobility, and the Representatives of a whole Nation, would in the Space of a few Years, when many of them were probably yet alive, contrary to all Justice, as well as their again and again repeated Oaths, directly perjure themselves by giving the Succession to another, who, so long as *Robert Stewart* was alive, or had Issue, had no Title to it? There is another Circumstance, which I had almost forgot, in the first of these Acts; that the Prelates, Nobility, and all others, who had sworn and put their Seals to it, do subject themselves, in case they should violate any Article of it, to the highest ecclesiastical Censure, of being excommunicated from the Church of God, which was a most terrible Thing in these Days. He that can believe that so many Persons of the highest Rank, would run that Risk, from which Kings themselves were not then exempted, and take Oaths quite contrary to their former ones, may believe any thing, and are not to be talked or reasoned with. I will not mention (because it is but a Trifle) that *Boece* and *Buchanan* give that Earl of *Sutherland*'s Son a wrong Name, calling him *Alexander* instead of *John*;

for so he is called in the *English* Records, as also by *Bald-
sinden*, *Boece's* Translator. But it is worth noticing,
that he was an Hostage in *England* for King *David's*
Ransom, and that (as our Historians relate) he died of
the Plague, probably this very Year 1357, in which that
King was restored to his Kingdom, and is falsely reported
to have made that unjust Act.

The Reviewer concludes his first Paper with those
Words, "Mr. *Ruddiman* has furnished us with another
" Instance of this King *David's* Inclinations to alter
" the hereditary Succession, viz. when he proposed to
" his Parliament to settle it upon the King of *England*
" and his Heirs; and because the Parliament did all as
" one Man reject this Proposal, Mr. *Ruddiman* says they
" could no more think of departing from the heredita-
" ry Succession, than of parting with the Independency of
" their Kingdom. How far, he adds, this Inference of his is
" from being well founded, we have seen from the Conduct
" of *Robert Bruce's* Parliament at *Air*, which agreed to
" exclude his own Daughter, for no Fault in that Lady
" known to Posterity; and from the Conduct of King
" *David's* Nobles, who swore to the Exclusion of *Ro-
" bert Stewart*, for no Reason known to us, but his
" quitting the Field of Battle sooner than a brave Com-
" mander ought to have done." The second of these
Instances I have proved to be absolutely a Fable: And for
the first I have accounted already. I do not so much as
insinuate, that the Lady *Marjory* was laid aside at that
Time for any Fault of her's: For I believe she was an
excellent Lady, worthy of her renowned Father: But
she was (which cannot be called a Fault) a *Woman*,
young and unmarried, and so every Way unfit for ha-
ving the Government put into her Hands, when the
Nation's All was at Stake. This she herself was so sen-
sible of, that she most willingly gave up all her Pretensi-
ons; and God (if I may so speak) has rewarded her fi-
lial Piety, and sacrificing her Interest to the publick
Good, that her Heirs have for many Ages possessed the
Throne of one, and near a Century and an half of an-
other *British* Kingdom; and that most of the crowned
Heads,

Heads, and many illustrious Families in Europe are descended of her.

As to the Proposal made by King *David II.* of settling the Crown (sailing Heirs of his own Body) upon the King of *England* and his Heirs, *Dr. Abercromby* is in a Doubt whether that King was in Earnest or not. But whatever is in that, yet as all our Historians own, that, notwithstanding the vast and unspeakable Advantages that would thence have accrued to the Kingdom, the Parliament unanimously rejected it with the highest Indignation, I would be obliged to this Author, if he will assign any other Reason for that their Behaviour, than what I have given, (Answer, p. 16.) viz. *That they could no more think of departing from the hereditary Succession of their Kings, than of giving up the Independency of the Kingdom.*

The Reviewer, in the End, left his Reader should forget it, repeats his former Accusation of *Robert II.*'s cowardly Behaviour at the Battle of *Durham*, than which nothing can be more silly and unjust. I have shewed, that what some of our Historians write concerning it is a mere Fable; and it is the most unreasonable Thing in the World to brand *Robert Stewart* for doing that, which every wise Commander ought to do in the Circumstances he then stood in, which was when he saw the Battle irrecoverably lost, to make a handsome Retreat, and to save as many as he could from being killed or made Prisoners. Is not this what has been, and is done by the greatest Generals in all Ages, to this Day? Was King *William* a Coward, for flying at the Battle of *Montcassel*, *Stenkirk* and *Landau*, or the heroick King *Charles XII.* of *Sweden*, for saving himself and some Part of his Army, by that Means, at the Battle of *Poltowa*? Not to mention later Instances. As to the Family of *Stewart*, there have not been braver Men in the World, than have shewed themselves in it. Witness what is recorded in our History of the gallant Behaviour of this *Robert's* Great Grandfather *Alexander*, at the Battle of *Largs*; of his Granduncle *Sir John Stewart of Bonkle*, at the Battle of *Falkirk*, anno 1298, and of his Father *Wal-*

ter, in the noble Defence he made of the Town of *Berwick*, anno 1319. And as to *Robert* himself, these very Historians that unjustly blame him here, relate so many noble Actions performed by him before that Time, as put his Courage and Magnanimity beyond all Dispute.

One of this Author's Designs of upbraiding that excellent Prince so often with the contrary Vice, seems to be, that he might have an Opportunity of bringing in that fine Witticism, with which he concludes this his first Paper, in these Words; "Perhaps Mr. *Ruddiman* will not chuse to say, that *Conardice* is a sufficient Ground for excluding a young Man from his Pretensions to a Crown." Tho' the *Reviewer's* Meaning is in this easy to be understood, yet I shall make no other Reply to it, but that it is a low and unworthy Piece of Wit, which is vented at the Expence of good Manners, Justice and Truth.

SECTION IX.

HAVING discussed the *Reviewer's* first Paper, I come now to consider his second, inserted in the Appendix to the *Scots-British Magazine*, anno 1747. It is wholly taken up in answering the Argument I brought for the *Bruce's* preferable Right, from the Authority, 1st, of the Clergy of *Scotland*, in their Manifesto at *Dundee*, 24th February 1309; and 2^{dly}, of that of the Nobility, Barons, Freeholders, &c. of that Kingdom, in their Letter to Pope *John XXII.* dated at *Aberbrothock*, 6th April 1320. In both these (as I had observed) the *Bruce's* Right is asserted and declared, in Terms so strong and express, that the Wit of Man could not devise any more strong, or more expressive of their Mind, than these are. This Argument alone, laying aside all the other I had insisted on, (none of which however the *Reviewer*, with all his Art, has been able to overturn) I did, and still do maintain to be so decisive in this Controversy, that I may rest the Matter on that single Point, without any additional Considerations whatsoever. For what can be of greater Force than the Judgment of a whole Nation, who

who lived at the Time, and are to be supposed to know their own Constitution better than those that live at so great a Distance from them? Nay further, should it be granted, that this their Judgment was wrong founded; (which I defy the *Reviewer* and all his Fraternity to make out) yet that would only prove, that (as I said before) they were in a Mistake; but not that they thought they had it in their Power to give the Kingdom by Election to whomsoever they willed.

What Method has the *Reviewer* fallen upon to answer all this? Why? as is the Custom of artful Orators, who, when they are puzzled with an Argument, which they cannot plainly and directly answer, *Proteus*-like, *Omnia transformant sese in miracula rerum*; they turn themselves into all Forms and Shapes, in order, if possible, to amuse the Judge; to divert his Thoughts from the Consideration of the main Cause, and to drown his Sense in the Multiplicity of Words. Thus our Author does with his Readers: For, instead of encountering my Argument in a direct Manner, (which he found was too hard for him to do) he runs out into eccentric Motions and By-paths, thinking thereby to evade its Force, or rather to keep it quite out of Sight. This being the Case, it is not to be expected, that I should follow him through all the dark Mazes and Labyrinths he would here lead us into, in the eight long Pages he employs on that Head. It will be sufficient for me, as briefly as I can, to touch at such Things, not that are material in the Question, (for there are none of them that deserve that Name) but what he would fain have his less thinking Readers to believe to be such: And, first, He gives us, what he calls "a short Sketch from our Histories, of what was the State of the Country, at the Time of the Competition. That the two chief Competitors, *Bruce* and *Baliol*, were Persons of great Interest and Power, and had many considerable Families, and leading People in the Country, attached to each of them by their Relations and Alliances.—That the Bulk of Mankind are not capable of judging in a critical Point of Law, especially after it has been ren-

dred

"dred more perplexed and obscure by the Explanations
 "of artful and designing Men: For which Reason they
 "are easily brought, in such Cases, to yield up their
 "Judgment to such of their Superiors as they most e-
 "steem:—And no doubt a great many even of those,
 "who were at that Time for *Bruce's* Right, sincerely
 "thought that he had the best Right."

But what is this to our Author's Purpose? or rather,
 is it not directly against it? The very Controversy,
 as he from our Historians states it, turned solely upon
 the Point of Right. Neither the People, nor the Com-
 petitors themselves, nor *Edward of England*, to whom
 as Arbiter the Case was remitted, did ever in the least
 doubt, that the Monarchy of *Scotland* was then strictly
 hereditary, nor had the least Intention of altering that its
 fundamental Constitution. The only Question was,
 Whether of these two chief Competitors had, according
 to that Constitution, the best Right to fill the then va-
 cant Throne? The great Distance that they both stood
 in from the last Possessor, but especially the *Right of Re-*
presentation, which had a little before that Time crept
 in among us, with respect to Succession in private E-
 states, had rendred the Matter somewhat perplexed and
 obscure. It is but too common with many People to
 think, that the Customs that prevail in their Time, have
 always been the same for many Ages before them. This
 is the great Fault, which (as the learned Historian Mr.
Carte and others observe) *Monfr. Rapin*, in his History of
England, has wretchedly fallen into. And this probably
 has induced some Persons at that Time, and many o-
 thers, (with the *Reviewer*) since, to think, that the Rule
 of Representation had been perpetual among us, at least
 of a much older Duration than it really was. And this
 Notion having once possessed their Minds, they might
 unadvisedly be carried to believe, that the Succession in
 Kingdoms should go the same Way as it does in pri-
 vate Inheritances. Neither is it to be denied, that the
 Judgments of Men would have a Bias put upon them, ac-
 cording as by Blood, Friendship, or Interest they stood af-
 fected to either of the Parties concerned in that grand
 Contro-

Controversy. This is no more than what frequently happens in Law-processes, in the determining whereof, even the most upright Judges are, through the like Causes, rendered susceptible of wrong Impressions, and insensibly led to pronounce unjust Sentences. But what has that to do with Election, which our Author would have to be the only Ground upon which *Robert Bruce* came to the Throne? The *Reviewer* himself owns, and makes no Doubt of it, that a great many of those who were at that Time for *Bruce's Right*, sincerely thought he had the best Right. And to be sure he will say the same of those that sided with the *Baliol*, that they likewise sincerely believed, that he had the best Right. Is it not plain then, that even, according to the *Reviewer* himself, the Point of Right was the only Thing, which on all Hands was regarded in this Dispute. It is possible indeed, that some on each Side might, by Interest or Favour, be tempted to give an Opinion contrary to their inward Sentiments: And it is certain, that the Judgment of one of the Parties was wrong. But is it not obvious to common Sense, that no Rack or Torture this Author can devise, can bring these Things to quadrate with his Plan?

He proceeds next to tell us what happened in the Kingdom after *John Baliol's* Advancement to the Throne, to the Time that *Robert Bruce* had got himself established in it. In which Digression of his (for so he calls it) tho' there are some Things that deserve Animadversion, yet as the whole is foreign to the Cause, I shall not here take any Notice of them.

He comes at last to the Manifesto of the Clergy, anno 1309, and to the Letter of the Nobility, &c. of Scotland to the Pope, anno 1320. "And because, says he, both our Authors, meaning the Pamphlet-writer and Mr. Logan, begin with the Letter to the Pope, tho' last in Order of Time, he will do so too." And after he has promised "to observe the Difference I make in the Translations from what the Author of the Pamphlet gives us from Mr. *Anderson's* Appendix," whence they have copied them, (tho' he is not always so good as his

Word)

Word) he sets down such Parts both of the Letter and Manifesto, as relate to the Question we are upon, viz. Whether, according to those Deeds, the *Bruce's* Advancement to the Throne turned upon the Point of Right, or Election? And in this the *Reviewer*, that he might shew himself to be always *sui similis*, to evade the Force of what I have said, all along makes Use of such palpable and gross Sophistry, as every fair Disputant would be ashamed of.

Of this the very first Words he has upon these Documents, are a remarkable Instance. "These are the Quotations, says he, fairly laid before you, not even excepting the *divine Authority* and *divine Appointment*, which Mr. *Ruddiman* seems peculiarly fond in his Translation, of putting in place of *divine Providence* and *the Favour of Heaven*, as if one were thereby to understand, that a particular Revelation had come down from Heaven on Purpose to decide this Dispute." I know there is nothing more common with those Contemners of royal, and Admirers of popular Government, than to make a Mock of that divine Right, which has by the Generality of wise and good Men in all Ages of the World, been ascribed not only to all lawful Kings, but also to all others, who according to God's Ordinance, are invested with either a supreme or subordinate Power and Authority. The Reason why Men of these Principles will not allow such a divine Right to be attributed to Kings in a particular Manner, we shall see afterwards. But it might have been expected, that none that have a true and serious Sense of Religion, and of that Oeconomy which Almighty God has established in his Government of the World, would call in question, far less ridicule, that divine Right which the supreme Being has, in Subserviency to that his all-wise Oeconomy, communicated to all lawful Kings and Magistrates, that are deputed to act as Ministers under him. That all Power is of God, these Persons dare not deny: But will they say that that Power terminated in these to whom it was at first communicated, and went no further? or, which is the same Thing,

Thing, that without a particular Revelation, or an immediate Commission under the broad Seal of Heaven, no Kings or Magistrates can be said to derive their Right from God, or to act as Deputies and Vicegerents under him? If this is their Opinion, then we know what Manner of Persons these are, whom we have to deal with. But if they are not arrived to that Height of Infidelity, must they not acknowledge it sufficient, that Almighty God has established some general Laws, by which that divine Right which was at first derived from him, is successively conveyed down, through all Generations, to all who according to these Laws, are intitled to bear Rule in all civil Societies? Are not the ten Commandments divine Laws? And are they not all of a perpetual Obligation? And particularly, is it not by the fifth of them, that all Inferiors are made subject to their Superiors? Or is the great Superior, God's immediate Vicegerent, and the *Deo proxima potestas*, only excepted? Servants are commanded to obey their Masters: And does not St. Paul assure them, that in so doing they *obey the Lord Christ*? And is it not so in the Obedience of Subjects to the lawful Commands of their rightful Sovereigns? Or must Subjects and Servants have an immediate Revelation from Heaven, before they are obliged to give such Obedience? Among the *Israelites*, *Saul*, *David* and *Solomon* were the only Kings of God's immediate Appointment: But had not the Successors of *Solomon* in the Kingdom of *Judah*, as divine a Right as they, after God had appointed, and confirmed it by a *Covenant of Salt*, *i. e.* by a perpetual unalterable Law, that his Heirs in a lineal Order, should succeed to and inherit his Throne? But I go further and maintain, that no Man possesses any Thing justly, but by a divine Right. His Life, his Goods, his good Name, and all he can call his, he has a Right to from God; and cannot forfeit that Right to them, till he has first forfeited them to God who gave them. But our Author, it seems, is of another Mind, who can think, that unless God has, by a Voice from Heaven, shewed him how to employ it, he can call his *Tongue* (and I suppose his *Pen* too) his own, and

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say,

say, *Who is Lord over him or it?* I know that the great Reason that our Author, and such as he, have for not allowing a divine Right to Kings, is because, if granted, it would prove an Encroachment upon the more sovereign and supreme Right of the People, from whom as all the Rights of Kings, according to them, are immediately derived, they cannot be properly styled the Vicegerents of God, but the Servants of the People, who, like the *Roman Tribunes* of old, can interpose their tremendous *Veto*, and give a Check to all their Actions and Proceedings. But how absurd and inconsistent are the Tenets of such Persons, especially such as call themselves of the Clergy, who, tho' they will not allow any Thing like *divine* in Kings, can yet assume a Kind of *Divinity* to themselves, can call themselves *God's Ambassadors*, take upon them the Appellation of *Divines*, and pretend a divine Right to their Ministry (a) and Stipends; which last is with some of them the most divine Thing they can lay hold on.

But to return to the Words *dispositio divina*, and *auctore Domino*, which I translate *divine Appointment*, and by *God's Authority* (b). I ask him, if that is not the true Meaning

(a) Witness the Book composed by a Society of Presbyterian Divines, intitled, *Jus divinum ministerii evangelici*, and another intitled, *Jus divinum ministerii ecclesiastici*.

(b) It is said, *Psal. lxxxii. 1. God standeth in the Congregation of the Mighty, he judgeth among the Gods; i. e. He superintends in the Courts of all Magistrates, whether subordinate or supreme, and strictly observes whether their Behaviour is answerable to the Commission they have received from him or not. And below, ver. 6. I have said ye are Gods, and all of you are Children of the most High; i. e. I have invested you with my Authority, and honoured you as such even with my Name. And it is very remarkable, that our blessed Saviour cites this very Text, John x. 34—36. to confute the Jews, who accused him of Blasphemy for calling himself the Son of God. Is it not (says he) written in your Law, I said ye are Gods? If he called them Gods, to whom the Word of God came, and the Scripture cannot be broken: Say ye of him, whom the Father hath sanctified, and sent into the World, Thou blasphemest; because I said, I am the Son of God? i. e. If he called Magistrates Gods, because they have their Commission from him, and judge by his Authority, and in his Name, how unreasonable is it for you to say of him, whom God the Father hath sanctified, (i. e. who by such miraculous Works as no Man ever did before him, has demonstrated himself to be his only begotten Son, and God himself in the highest Sense*

Meaning of these Words, or if he has found among Lexicographers, to whom Mr. Logan sometimes remits me, so much as one that puts another Sense upon them? And if by them the Clergy and Nobility of Scotland understood, that Robert Bruce, their then King, had his Right to the Kingdom from God only, *i. e.* possess it by a divine Title, would the *Reviewer* have them so absurd as to think, that God had revealed it to them by an immediate Voice from Heaven, when they knew that no such Revelation was to be expected? He says, I am particularly fond of divine Authority and divine Appointment, in the Translation I make of these Words, as if I had not given the true Meaning of them. In that I shew not any Fondness: But as to the Thing itself, I am particularly fond of it, as I am of every Thing that God appoints, and is the Author of.

After this fine Beginning, he tells us next, "That we may perceive, that in both these Papers King Robert's Right of Succession is strangely blended with the People's Authority of assuming him, and making him King, upon Account of his Merit, in delivering them from Oppression, and with the Right which they pretend to have of deposing him, as soon as he shall fail in his Duty, or desist from doing those Things by which he at first merited to have the Kingdom bestowed on him."

Every Word of this is fallacious and sophistical. There is no strange Blending in the Matter, as our Author would represent. All that is said in these two Deeds is perfectly harmonious, and substantially consonant to what they were designed to express. To make the Reader the better to understand this, I must, in the first Place, observe to him, that these two Deeds were written, as on different Occasions, so for very different Ends.

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(Sense of the Word,) thou blasphemest; &c. For this Reason it is, that the Persons of Kings have by all (except the Despisers of Dominions among us) been held sacred and inviolable; and that some of the Roman Emperors that were Christian, did not stand to say of themselves, *Numen nostrum* and *divinitas nostra*: Which yet none of the pious Men of these Times blamed them for,

That of the Clergy was principally designed to assert, recognize, and confirm King *Robert's* Right to the Crown before all others, which they do in the strongest Manner that can possibly be thought of. But the Letter of the Nobility to the Pope was chiefly, if not solely, intended to assert the Independency of the Kingdom, against the unjust Prétenſions of the King of *England*. It is directed to the then Pope of *Rome*, who, contrary to all Justice, supported and abetted that King's Cause. They indeed likewise assert King *Robert's* Right in very strong Terms, but that was only by the bye, their chief Design being (as I said) to expostulate the Matter with his Holiness, and to shew the flagrant Partiality he was guilty of towards their Enemies. And it is astonishing, that notwithstanding the high Regard they otherwise pay him, and that vast Authority he, and his Predecessors and Successors, did arrogate to themselves over all the Kings and Kingdoms of Christendom; yet they are so bold as to despise his spiritual Thunderbolts, which were very dreadful in those Days, and tell him to his Face, that if he should continue to favour the unrighteous Cause of that *English* King, all the Miseries and Calamities that would thence ensue to both Nations, would by the most high God be laid to his Charge. And to shew how firm their Resolution was to maintain their Independency, they tell his Holiness, That if even this their lawful King should go about to subject them or their Kingdom to that of *England*, they would expel him as their Enemy, and the Subverter of his own and their Right. And what is there in all this, but what may and ought to be said to the most rightful hereditary King in the World? Would not the People of *France*, *Spain*, *Denmark*, *Prussia*, &c. say the same to their Kings, if they should subject themselves to a foreign Yoke? For what other Interpretation could that possibly bear, but that such a King had abandoned his People, and given up all the Right he formerly had over them (a)? The Reviewer has again

(a) To make the Thing yet clearer, if possible, let it be supposed, that some Time after this a King of *Britain*, who had for many Years shewed

again and again maintained, that the Right to a Crown and that to a private Estate unentailed, ought to go the same Way. If then the Proprietor of such an Estate, should alienate it to another, would he notwithstanding still continue to be the Proprietor of it? As the *Reviewer* cannot say *that*, as little can he say, that a King who has surrendred up his Sovereignty, has any longer a Title to it.

The *Reviewer* here speaks, as if by the above Words of that Letter, the Nobility, &c. of *Scotland* affirmed they had a Right (and would put it in Practice too) to depose King Robert as soon as he should fail in his Duty. That was a Doctrine reserved for our later and more enlightened Times, in which we are taught, that Kings may be taken to Task by their sovereign Lords the People, and not only be deposed, but have their Heads struck off, upon their Misgovernment. The Nobility of *Scotland* meant no such Thing. They do not say that they would depose him, (for that he is supposed, if he should be guilty of what they there speak of, to have done himself) but that they would expel him; and that for no other Reason but that one, if he should go about to subject them and their Kingdom to that of *England*, i. e. if he should prove *felo de se*, and, instead of being a free King of a free People, he should enslave both himself and them to the Vassalage and Thralldom of another King or Nation.

But our Author, to give this another wrong Turn, adds, that the Words of the Letter bear, that they the People would depose him, if he should desist from doing those

shewed himself a true Father of his Country, and protected his People in the Enjoyment of their just Rights and Properties, against all the Invaders of them either at home or abroad: Let it be supposed, I say, that such a King, wearied with the continual Wars he had been engaged in with the King of *France*, should at last take it in his Head to subject himself and his Realm to that King; and accordingly do Homage for it in the usual Form, *Ego devenio hominem vestrum, de vita & membris & terreno honore*, and in virtue thereof be obliged to serve in his Wars, to pay him Tribute, &c. In such a Case, I ask the *Reviewer*, Whether the People of *Britain* would look upon such a King as their Sovereign, and whether they would not treat him in the same Manner as the People of *Scotland* threatned to do their King Robert in this Letter?

these Things by which he at first merited to have the Kingdom bestowed upon him. As if forsooth it was not upon the Account of his Right, but for his noble Achievements, that they had made him their King; than which nothing is more false, or more inconsistent with their Words. They are so far from saying, that they had bestowed the Kingdom upon him, that a little before, they expressly declare, that it was not they, but the divine Appointment, and the Right of Succession, according to the Laws and Customs of the Kingdom, which they would maintain to Death, that had made him their Prince and King. Besides, they could not say in any Sense, that they had bestowed the Kingdom upon him. So far from it, that when the whole Nation had submitted to another King, and were almost out of all Hopes of recovering their former Independency, he set up his rightful Title, and with a few Followers got himself crowned at *Secon*, summoned his People to repair to his Standard, and to take up Arms for asserting their own ancient Liberty as well as his just Authority over them. Thus it was he himself, and not they, that at first made him their King. And so far at first were the Generality from owning him as such, that the greater Part for Fear of the *English*, durst not join him, and too many of them sided with the Enemy against him.

'Tis true, the Clergy in their Manifesto, and the Nobility, &c. in their Letter, mention King *Robert's* Merits; and they had been very ungrateful had they not acknowledged them. But what were these Merits? Truly beyond all Parallel: That a Person, who might have peaceably enjoyed his own private Estate, which was then as great as perhaps any in the Kingdom, should forego his own Ease and Quiet, and for the Sake of his People, who were then brought to the last Degree of Misery and Slavery, should have the Courage to engage in the most desperate Cause that ever was undertaken, and venture his Life, and all that is valuable among Men, against not only the then far greater Part of his own Nation, but also against the vastly superior, and, in all Appearance, irresistible Force of another Nation, and that governed by

by a great King, one of the most valiant and most successful Princes in the World. Who but a *Robert Bruce* would have done this, or could at last have accomplished the glorious Design, both of asserting his own Right, and of recovering the ancient Freedom and Independency of the Kingdom? What grievous Hardships and Sufferings he underwent, insupportable to any other but himself, in bringing all this about, is largely described in our Histories; so that he might justly have said what is reported of him,

Me nisi Scotorum libertas prisca moveret,

Tot mala non paterer, orbis ob imperium.

We see then what were the Merits of that incomparable Prince, which these two Documents speak of: Not that it was on that Account, that he either challenged, or the People gave him the Crown: For that being hereditary, they knew not to be at their Disposal. Had it depended on their Election and Choice, there was not any in the whole World, that could have so good a Claim to it as he: But so far were the People from putting it on that Foot, that they constantly in both these Writs assert, that it belonged to him by inherent Birth-right, as being next and true Heir to it. How unreasonable is it then in the *Reviewer*, to found King *Robert's* Title to the Crown upon any Thing else, than that for which they so often affirm it was due to him? The Clergy indeed say of him, that he was worthy of the Name and Honour of a King. But may not that be equally said of any other King, let his Title be otherwise ever so just and incontestable, that he is worthy or unworthy of the Name and Honour he bears, according as he does, or does not, *tanti nominis mensuram implere*, as *Ovid* speaks, and answers or not answers the End of his high Office? And is it not the hardest Thing in the World, that one should not dare to commend the noble Qualities and Virtues of a King, for Fear he may be thought thereby to doubt of, or derogate from the Justness of his Title?

As to the Words of the same Manifesto of the Clergy, *That he was assumed to be King, and by the Authority*

city of the People set over the Kingdom, and solemnly made King of the Scots, I have accounted already in my Answer, p. 21. and shewed, that they are only to be taken in a declarative Sense. All Acts of Parliament are made by the Authority of the Persons assembled in it: But they are not all of the same Nature; for some of them have no other End but to declare and publish to the World what was anteriorly just and right. Thus the *English* Act of Parliament, recognizing our King *James VI.*'s Right to the Throne of that Kingdom, tho' it expressly bears, that it pass by a *Parliamentary* Authority; yet no Body that reads it, but must see, that the sole End of it was to announce and declare (as it does in the strongest Manner) the Right which King *James* had to that Crown, immediately on the Dissolution and Decease of Queen *Elisabeth*; and consequently a good Time before that Parliament could meet. Besides, we are to suppose, that that Convention of the People of *Scotland*, or their Representatives, which recognized King *Robert's* Right, was called by his *Authority*, in order that they might join their *Authority* with his, for the more firm Establishment of his Power and Government. And this is what upon the Matter is commonly done at the Accession of every new King in all hereditary Kingdoms: And is much of the same Nature with the Homage, which such Kings upon their Advancement to the Throne, require to be paid them by those Dukes, or other great Lords that hold of them; tho' that Homage and Service was due to them immediately after the Death of their Predecessors.

I might pass over the rest of this Author's long Paragraph, as containing nothing but impertinent Tattle. There is only one Thing in it worth noticing, *viz.* " If (*says he*) *John* had been successful, and that under his Eye, the Nobles and People had emitted a Declaration, setting forth, that tho' they submitted to him as King *de facto*, advanced by the King of *England*, yet they acknowledged the hereditary Right to be in *Bruce's* Family; or even before King *Edward* gave his Decision, if the Nobility and all other Ranks " had

had sent a general Representation to *Edward* in favours of *Bruce's* Right; when they might with Freedom have done it: In either of these Cases, there would be Reason to believe, that such was the general Opinion of those Times. But when a powerful, a victorious, a wise and high spirited Prince, had got sure Possession of a Throne, which he had claimed on the Footing of hereditary Right, when it would not probably have been safe to have contradicted his having that Right at such a Time, any Compliment the People paid him cannot with impartial Men be laid much Stress upon: But on the other Hand, every Assertion they make of the People's Privileges and Liberties at such a Time, ought to be allowed to have the greatest Weight, as being made under the Inspection of a great and magnanimous King, who must be supposed to have been tenacious of the Rights and Prerogatives of the Crown, and consequently jealous of every Encroachment of the People, &c."

Here we have a Piece of the most arrant Juggling and Sophistry, that ever Paper was defiled with. It turns all upon idle and false Suppositions, and a Train of fictitious IFs and ANDs; which are all destroyed by another IF, viz. If King *Robert's* Right had been so clear, as these IFs would suppose it, there would have been no Dispute, and no Occasion for remitting the Decision of it to the King of *England*. But who pretends that was the Case? That there was a Right, and that indivisible in one or other of the two Competitors, is on all Hands agreed. But as such a Case had never before happened in *Scotland*, and that the Matter was either of itself, or rendred so by the Interest of the Parties, difficult to unravel, it was no Wonder that the People should be divided, as in Factions, so in Opinions. And tho' we may suppose, that the greater Part of the People did believe, (as their after Declarations testified) that *Robert Bruce* had the justest Claim; yet as they saw, that the Opposition it would meet with from *Baliol* and his Party, would put the Kingdom into a Flame, they choose to compose the Matter, by referring it to the Arbitration of

a neighbouring (and at that Time thought a friendly) Prince, little expecting that he would make a Handle of it for satisfying his own ambitious Views. If our Author's Reasoning here were good for any thing, it would render all Courts of Justice useless: For if all Cases were as clear as he supposes that between *Bruce* and *Balio*, might have been, there would be no Occasion for troubling these Courts with them. But he has fallen upon a new Way of loosing the *Gordian Knot*, not by disentangling the Threads of which it was composed, but by cutting it asunder as *Alexander the Great* did; and that is by setting aside the Right of both the Competitors, and putting the Crown upon the Foot of Election, which might have excluded them both, and only happened to light upon King *Robert*, because he was a brave Fellow, and the likeliest Person they could think of for being their Head against their Enemies. Thus much for our Author's *IFS* and *ANDS*. But there is one Thing more I must observe of them, that they are not only contrary to Fact and Truth, but that they also clash with one another. "For (*says he*) that as *Robert Bruce* claimed the Throne on the Footing of hereditary Right, it would not probably have been safe to have contradicted his having that Right at such a Time." And yet immediately after he adds, that the same People that durst not question his hereditary Right, yet had the Courage and Boldness, at that very Time, "to assert their own Privileges and Liberties, (*of which one, and that a fundamental one, according to these Authors, was, that they had a Right to expel or depose him when ever he desisted to do what they would have him*) and that under the Inspection of a great and magnanimous King, who must be supposed tenacious of the Rights and Prerogatives of the Crown, and consequently jealous of every Encroachment of the People;" which is in other Words, "Let this *Robert Bruce* talk ever so much of his hereditary Right, which we the People in the present Juncture do not think proper, or perhaps safe for us, to call in question, yet we will tell him, and that to his Face too, that the hereditary Right he boasts

“boasts of, is really and truly nothing but a Fiction,
 “and without any Foundation; and that he must know
 “that he has no Right but what we have given him;
 “and that if he do not as we would have him, we will
 “expel him from the Throne, if not treat him worse.”

He that can reconcile Contradictions, may try his Hand upon this. But alas, poor Man, this Author has so bewildered himself in his own Mazes, that he knew not what he was saying. For there is no Man of the most shallow Understanding, that cannot but at first Sight perceive, that nothing could be more remote from the Intention of those Declarations, and more impertinent at that Juncture, than to speak either of the Prerogatives of the Crown, or the Privileges and Liberties of the People, when the grand Concernment of both King and People then was, whether they should be a People at all, *i. e.* a free and independent Nation, and subject only to their own native and hereditary Prince. In what Sense it was said in the Clergy's Manifesto, that *the People had made Robert Bruce their King*, and in the Letter of the Nobility, that *they would expel him, if he should subject himself or them to the King of England*, I have sufficiently explained already, and I bid Defiance to the *Reviewer* and all his Adherents, to make these Words capable of any other Meaning than I have given them.

But to go on with this Author. Because it seems he could not find Examples nearer home, he carries us next to the Empire of *Russia*, as if *Scotland* and it had the same Rules of Succession. It is generally thought, that by the Laws of that Empire, the Predecessor has the Nomination of his Successor. But no Body says it was so in *Scotland*, and he himself, as we have seen, flatly denies it, when he thought it would answer his Purpose. How idle is it then to enquire, who is the *jure divino* Monarch of that Empire? If the Law I have mentioned be the Constitution of that Monarchy, then he or she who has succeeded according to that Law, is the rightful or *jure divino* Monarch of it, otherwise not. The *Reviewer* has here inserted an ironical Sneer, by way of Parenthesis, [*If this divine Right exists in Russia, or any*

where else than in Scotland,] to which I shall give no other Answer than, that over the whole World, as *the Earth is the Lord's, and all that dwell therein*, every King that has a Right to the Throne he possesses, is *jure divino* Monarch of it; and none but a Freethinker, or worse, will deny it.

He comes now more directly to examine the Passages in these two Documents, on which I found one of the principal Arguments I advance for the *Bruce's* preferable Right: And tho' they evidently contain so many and so strong Expressions of the People's firm Belief and Persuasion of that Right, yet the *Reviewer*, after his wonted Manner, uses all the deceitful Arts he could invent, to elude the Force of them.

Turning then first to the Declaration of the Clergy; "I think, (*says he*) that these Expressions are designedly ambiguous, as if those reverend Gentlemen wanted the common People to believe what they did not believe themselves." We shall soon see what will follow from this fine *Exordium*. What he says of our *Scottish* Clergy at that Time, may perhaps have been true of some that have succeeded them, that they declared one Thing, but believed another. But what an extravagant Thought is this? For if it is true, it is of no Use to have Recourse to such old Documents, which at that Rate, for ought we know, are all to be read backwards, at least have no certain Meaning in them at all. However, to make this out in that Declaration, he repeats the first Words of it; "When there was a Controversy, &c. as above, the *loyal People*, without Hesitation, did always maintain, [or rather, *held and believed it to be true*] that *Robert Bruce* was the true *Heir*, &c." Are not these Expressions very strong? No, says he, for applying them to his *regula Lesbia*, or Nose of Wax, he finds they have not the Meaning they manifestly bear, and every Man but himself cannot fail to put upon them. For he immediately adds, "He would gladly know whom they mean, in this Part, by the *loyal People*? Surely it cannot be such a Set of People, as those by whose Authority *Mr. Ruddiman* says

"says he is determined, to wit, the Nobility, Barons,
 "Freeholders and whole Commonalty [he should have
 "said *Community*, i. e. the *whole Body of the People*] of
 "Scotland. For if these had generally been for *Bruce*
 "at the Time of that Controversy, there would have
 "been no Body for *Baliol*, and consequently no Occa-
 "sion for submitting the Decision to King *Edward*." In this I heartily agree with him: But then I always thought, that what was agreed to by the greater Part of the People, or their Representatives, is reckoned to be the Deed or Judgment of the whole. Otherwise what will become of a great many Acts of Parliament, to which (as often happens) every individual Member does not give his Consent? And the same is to be said of all judicial Proceedings before Courts that consist of several Judges, in which it frequently falls out, that one or more strike out against the Opinion of the rest. And what will become of our Author's elective Scheme, according to which the Minority must be over-ruled by the Majority, and sometimes the Matter is concluded by one casting Vote?

But the *Reviewer* has at last found out who these loyal People were. "For these (*says he*) were no other
 "but the Friends and Partisans of the *Brucean* Family." What is this other than to say, that *Bruce* had only his own Friends and Dependents to stand by him? And the same might be said of the Friends and Dependents of *Baliol*. As if the rest of the People, who were the far greater Number, and had no such Connection with either of them, stood neuter, and did not, or could not pass their Judgment in a Matter of the highest Importance, and of equal Concern to them all. I shall allow that there were a great many that at first sided with *Baliol*, and particularly the Family of the *Cumins*, who were by Interest, Alliance, or otherwise, much attached to him, and very numerous and powerful at that Time. But that does not hinder but that there were then a great many more who (as is expressed in that Declaration) were firmly persuaded, that *Bruce* had the preferable Right to the Crown: And why may not that be
 said

said of the People in general, which was true of the Majority, or greater Part of them?

But what next follows is a masterly Stroke of the Reviewer, and surpasses all he has hitherto said. "The second Time (*says he*) they, i. e. the Clergy, seem to assert Bruce's hereditary Right, is in these Words: "The People, by the Favour of Heaven, [auctore Domino] agreed upon the said Lord Robert, now King, in whom the Rights of his Father or Grandfather to the foresaid Kingdom, by (or in) the Judgment of the People, doth yet remain and continue intire, &c. And pray, what is here asserted, but that the whole People were sensible King Robert had as much hereditary Right as his Father and Grandfather had before him? And who doubts that?" See how cautious the Man is. For 1st, He would not say, that the Clergy positively assert King Robert's hereditary Right, but only that they seem to assert it. Next, tho' he has the Latin Words *auctore Domino*, yet he takes Care to give us Mr. Anderson's Translation of them, *by the Favour of Heaven*, and not as it should be translated, *by God's Authority or Direction*. And 3^{dly}, As to the Words *judicio populi*, tho' they ought to be translated (as every Body will see that considers the whole Sentence) *in the Judgment of the People*, and not as he chuses rather, *by the Judgment of the People*. As if we were to understand, not that the People were in their Judgment persuaded, that King Robert had the Right, but that the People had, by a judicial Act, voted and elected him for their King, without regarding whether he had a Right to be so, or not, when it is expressly said that the People's Judgment was, that the *jura patris avique sui* (*sciz. Roberti*) *ad prædictum regnum adhuc resident & vigent incorrupta* [in co.] But these are but Trifles in Comparison to what follows. For tho' they had before said, that the loyal People of Scotland, among whom (notwithstanding the idle Evasion of the Reviewer to the contrary) they included themselves, were firmly persuaded of his Right; and that a little after they add, that the same loyal People would live and die with him as being the Person who by

Right

Right of Blood, and as being endued with other eminent Virtues, is fit to reign, and worthy of the Name of a King, and the Honour of a Kingdom: Yet all this notwithstanding, the Reviewer brings the Clergy in this Passage as making a Mock of his Right, *i. e.* when they say, that *the Rights of his Father and Grandfather did, in the Judgment of the same loyal People, still reside, and were in full Vigour uncorrupted in him,* they meant no more, but that, for ought they had in other Places of this their Declaration said, his Right to the Crown of Scotland was neither better nor worse than that of John Baliol, or of any other Person whatsoever, *i. e.* that it was none at all. But what is this other than to make the Clergy with the same Breath flatly contradict themselves, and at the same Time be guilty of such gross Equivocation, as the wickedest of all Jesuites would be ashamed of?

The Turn the Reviewer gives to the third and last Mention that the Clergy make of King Robert's Right, is not much better. "It is (*says he*) in the following Clause. "And being by their (the People's) Authority advanced to the Crown, he is solemnly made King of Scotland, with whom the loyal People [not all loyal People, as he has it] will live and die, as with one [it should be with him] who by the Right of Blood, &c." Upon this the Reviewer adds, "I could almost venture to say, Mr. Ruddiman would gladly be quit of this Clause altogether." Not the hundredth Part so gladly say I, as he and the Pamphlet-writer would be, to be quit of the other Clauses in that Deed, which quite destroy their imaginary Scheme. But in this, as in most other Things, the Reviewer is vastly mistaken. Mr. Ruddiman finds no such Fault in that Clause, as he imagines, there being nothing in it, that can in the least affect King Robert's hereditary Right. The Authors of that Declaration had asserted that Right three Times over: And is it to be thought, that in the End they would with one Dash, destroy all they had before said of it, and that it was not upon the Account of any Right he had, but only for his Merits, that they had declared, or if you will, had made him

him their King? As for the Words *assuming* or *making* a King, I have fully explained them already, and shewed the Sense in which they are only capable of being taken in that Manifesto. I have likewise given several Examples from holy Writ, of Kings that have been *made* thus by the People; who yet were not elected by them, but had their Right anteriorly bestowed on them, *dispositione divina* and *auctore Domino*, i. e. by the Appointment and Authority of the great God himself.

But because my Opponents lay such Strefs upon these Words, my Readers will forgive me, that I enlarge a little upon what in my Answer I had said of the great King *David*, whom our Author (whatever his *secret* Opinion, as a Freethinker, may be) will not, I hope, have the Confidence *openly* to deny to have been a King *jure divino*, even in his Sense of the Words. And yet this same King *David*, tho' he had for seven Years and six Months been kept from reigning over all the Tribes of *Israel*, except that of *Judah*, was notwithstanding at last acknowledged by the other Tribes to have been their rightful King all that Time. And it is very remarkable, that (as we are told, 2 *Sam.* v.) *David made a League with their Elders*, and that tho' he was anointed before, yet they again *anointed him King over Israel*. Here we have the Case of King *David*, to which that of King *Robert* was very much parallel. *David* was rightful King of all *Israel* by God's own immediate Appointment, from the Death of King *Saul*: *Robert Bruce* was rightful King of *Scotland*, from at least his Coronation *anno* 1306; and that likewise *dispositione divina*, i. e. by God's general Appointment, as being the next and true Heir to that Crown. *David* was kept from the Exercise of his Government for several Years, over the ten Tribes, by the Usurpation (for so I may call it) of *Ishbosheth* the Son of *Saul*. *Robert Bruce* was kept from his, partly by the Opposition made him by some, and partly by the Terror others of his People were under not to own him, from the over-ruling Power of *England*. Both Kings came at last to the full Exercise of their Government, *David* to that over all *Israel*, *Bruce* to that over all *Scotland*. *David* makes

makes a League with the *Israhites*, who anoint and make him their King, tho' he was really and *de jure* their anointed King before: i. e. they promise him all dutiful Obedience, as their true and lawful King, and as having a previous Title thereto by God's own Appointment: And he on the other Hand, engages to protect them against their Enemies abroad, and the unjust Invaders of their Liberties and Properties at home. See *Psal.* lxxviii. ult. and that King's noble Resolution, *Psal.* ci. *Robert Bruce* makes a League with his People, that if they would join their hearty Concurrence, he would with all his Power, endeavour to recover out of *English* Hands, and constantly maintain their national Liberty and Independency; and they on the other Hand, upon that, and no other, Condition, *assigne, make, and declare* him their King; tho' at the same Time, they acknowledge, that previously to any Deed of theirs he had always a true Right to their Allegiance. This, I hope, will clear up and explain the Words of *assuming* and *making Robert Bruce King*, and rescue them from the false and inconsistent Gloss the *Reviewer* and others would put upon them.

It is pleasant, by the bye, to observe how the *Reviewer* plays fast and loose with the Word *People*, or *loyal People*, in that Declaration. In the Beginning, where it is said, that the *loyal People* were firmly persuaded of the *Bruce's* hereditary Right, he will have it to be only understood of the *Friends* and *Partizans* of the *Brucean* Family. But afterwards, when it is said he was *advanced to the Throne by the Authority of the People*, he will have us to understand, not the *loyal People* only, (i. e. the *Friends* and *Partizans* of the *Brucean* Family) but the *People of Scotland* in general, adding, *that this last Assertion is plain and free of Ambiguity*. What miserable Shifts are these? Is it to be imagined, that in so solemn a Declaration, concerning a Matter of the highest Consequence, the Authors would juggle with Words, and speak in a Manner, as if they designed not to be understood? For so certainly they must have de-

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signed,

signed, if the same Word is to be taken in two quite different Significations. But all this is pure Fiction, and as distant from Truth as from their Intention.

Before we leave this Declaration of the Clergy in a national Council, I must acquaint the Reader, that there was another anterior to it, (as Mr. Anderson informs us in his *Essay upon the Independency, &c.* of the Bishops of Scotland by themselves) to the same Effect, says he, and almost in the same Words, wherein the Bishops Names were ingrossed, being in Number twelve, which he sets down. But there was another yet more solemn than the other two, viz. that given in a Parliament held at St. Andrews in Scotland, 17th March, 1308, i. e. near a whole Year before that of the Clergy: Mr. Anderson tells us, *Independency* p. 253. That he had seen a Copy of it among the Collections of the learned and industrious Antiquarian Sir James Balfour. It is the same, adds he, Word by Word, with the Declaration of the Clergy, with the Addition only of the Words, and Community, or People of Scotland, in such Places of it as mention the Clergy. The Reviewer gives a very sad Account of our Scottish Clergy at that Time, that their Words in that their Declaration are designedly ambiguous, and that they wanted the common People to believe what they did not believe themselves. I hope he will not say so (but what will he not say, when a bad Cause is not otherwise defensible?) of the Community of Scotland, or their Representatives in Parliament, that they also would make a *bocus pocus* Act, and declare the Thing they never meant.

It is somewhat odd, that the Reviewer, after he has bestowed so many wretched Criticisms upon the Clergy's Declaration, and struggled hard to detort it to a Sense quite inconsistent with its Design, has yet not thought fit to use the same Arts with the Letter to the Pope. It would seem, (tho' we have otherwise no Reason to doubt of his Inclination that Way) that he could find nothing in it to fix upon, or that could possibly answer his Purpose: And therefore he has judged it most prudent to take another Method with it. These Words in it,
Whom

Whom the divine Appointment, and the Succession of Right, according to our Laws and Customs, which we will maintain even unto Death, and the bounden Consent and Assent of us all, have made our Prince and King, was such a stumbling Block in his Way, that he could not possibly get over it. These are the Words, not of the Friends and Partizans of the Brucean Family, (whom he would only to have been meant in the Declaration of the Clergy) but of the Nobility, Barons and Freeholders, (the Names of a great many whereof are particularly set down) and of the whole Community of Scotland. Here our Author could find no Ambiguity, every Thing in it being perspicuous and plain: He therefore wisely choose to avoid scanning and canvassing the several Clauses of it, the Touch of every one of which (except that of the Word *expel*, of which before) he saw would have burnt his Fingers. But what shall be done with this (to him unlucky, but to Scotland a glorious) Letter? Some Shift must be fallen upon, if not to break, at least to elude its Force; and what is that? Why? He resolves the whole into mere "Compliment, which (*he says*) the Subscribers, as Affairs were then situated, could not handsomely shun "paying to this their great Deliverer King Robert." A strange Kind of Compliment this! That the Nobility, &c. of Scotland should entertain his Holiness the Pope (for to him, not to King Robert they are writing) with a gross and arrant Falshood; and tho' they tell him, that this their King had a most righteous Title to the Crown by the Laws of God and Man, and that they would maintain these last to Death; yet they meant no such Thing, but that, on the contrary, John Baliol, if he was then alive, (tho' I believe he was not) and his Heirs after him, were the only Persons that had a just Title to it: And of Consequence that it was not on the Account of any Right that King Robert might pretend to have to the Crown, which was none; but solely for his great Merits, and the wonderful Deliverance he had wrought for them, that they had elected him to be their King. What is this but to accuse these our glorious Ancestors,

the Nobility, Gentry, and whole Community of the Kingdom, as a Company of the vilest Liars and basest Dissemblers that ever the Sun shined upon? If this is the *Reviewer's* Way of complimenting, much Good may it do him. But sure I am, that as this is the highest Affront that can be thrown upon the Memory of those our most noble and worthy Patriots at that Time, so no Man that has any Remains of Ingenuity in him can truly think that they were capable of such monstrous Hypocrisy and Disingenuity. And the *Reviewer* himself will forgive me, if I add, that he cannot seriously think so himself. But I must again put him in Mind, that the same Nobility, Clergy, and all the Representatives of the Kingdom, had about two Years before this, in a Parliamentary Deed, not only declared what they say now in that Letter, but had also sworn to the Truth of it. That impartial Writer *Nath. Bacon*, in his History of the Laws and Government of *England*, p. 135. tells us, that the most terrible Enemy *Scotland* ever had, *Edward I.* got a Dispensation from the Pope to perjure himself: But no Body will say, that these our *Scottish* Worthies ever wanted, or would make Use of such a Dispensation. 'Tis indeed very true, that both the Clergy and the Nobility, in those two Documents speak much of the great Merits of that heroick and ever renowned Prince, for which they had the largest Field to descant upon, that a People or Nation perhaps ever had. These were certainly an additional Obligation upon them, to enforce their Duty and Adherence to him. But they no where put their owning him for their King upon that Foundation. *St. Peter* commands *Servants to be subject to their Masters, not only to the good and gentle, but also to the froward*. But who is there that will not pay a more ready and chearful Obedience to that Master that treats him with Lenity, Tenderness and Compassion, than to him that uses him in a barbarous, cruel and tyrannical Manner? When yet still, according to that great Apostle, Obedience is equally due to both.

Our Author being full of this his doughty Performance, in the End makes a Recapitulation of what he has

has said, which he reduces to no fewer than seven several Heads. But as I have answered and confuted every one of them already, it would be an Abuse of my Time, as well as of the Reader's Patience, if I should enlarge any further upon them. I will therefore leave him, *Ixion*-like, to hug and embrace his imaginary *Juno*, which is nothing but a Cloud or Vapour, without any real Substance or Solidity, and will, when he thinks he holds the beloved *Phantom* ever so fast, instantly and imperceptibly slip out of his Hands.

Par levibus ventis volucrique simillima somno,
as *Virgil* speaks on the like Occasion. But I need not with this Author what the Poets feign to have been *Ixion's* Punishment, which was the being tied to an ever-rolling Wheel; For that he has brought upon himself, by his involving himself into so many Wheels within Wheels, all of his own making, from which he has no other Way of being extricated, but by giving up a Cause, the Defence whereof has put him upon so many of his idle and vain Contrivances.

APPEN.

APPENDIX,

DEMONSTRATING

That the Claim said to have been given in to the Crown of Scotland, by *William* the first Earl of *Douglas*, at the Coronation of our King *Robert II.* is without any Manner of Foundation.

TH O' I have, in the preceeding Dissertation, to the Satisfaction, I hope, of all impartial Judges, made it clear and evident, that in the Competition for the Crown of this Kingdom, betwixt Lord *Robert Bruce* and Lord *John Baliol*, anno 1291, the Right to it was in the former, and not in the latter: Yet my Antagonists, in order to support their popular Scheme, still taking it for granted, that *John Baliol* had the preferable Title, will not suffer that Competition to rest, but give out, that, if the Succession to the Crown was to descend in a strict hereditary Manner, they have found out Rivals in Scotland, who, as at first, so to this Day, can cope with *Robert Bruce* the Competitor, and all his Descendants, as having upon that Foot better Pretensions than they. And upon this Ground they subsume, that unless *Robert I.* the Grandson of the Competitor, came to the Crown by the free Choice and Election of the People, the Reigns of that Prince and all his Successors, down to the present Time, have been nothing else but a constant Train of Usurpations upon the Rights of others. Tho' I have shewed that all this is a shameful Begging of the Question, and have established King *Robert I.*'s Right upon such Principles as they cannot overturn, yet I thought it worth while to enquire who the Person
and

and Family are, whom they set up as Competitors for the Crown, against the Family of the *Bruces*, and of the *Stewarts*, who, as deriving Right from them, have possessed that Throne through so many Generations. The Person then that these Authors pitch on, is *William* the first Earl of *Douglas*, who being descended (say they) from the *Cumins*, and by them from the *Baliols*, who (as they will have it) had the preferable Right, this Earl *William* and his Posterity (if hereditary Succession was to be the Rule) ought to have inherited the Crown all along to this very Day. 'Tis true, that the Continuator of *Fordon*, and some of our later Historians relate, that upon the Accession of *Robert II.* the first of the *Stewarts*, anno 1371, this *William*, the first Earl of *Douglas*, did put in his Claim to the Crown, as having Right to it through the *Cumins*, from the *Baliols*; and that this *Robert II.* in order to pacify him, and to make him drop his Pretensions, was obliged to give one of his Daughters in Marriage to his Son. These Historians do not say this *William's* Claim was just, but only deliver it as a Matter of Fact, that he thought, or would have the People believe it was so: And I, tho' I had but too many Instances of their Errors and Mistakes in other Things, as gave me no great Reason to trust them in this; yet I could not think, that in a Fact, that (as they represent it) was done openly and not in a Corner, they would so grossly impose upon the World as here they have done. This, I confess, made me in my Answer to Mr. *Logan*, take for Truth, what I am now to shew to be a mere Fable.

And, in order to put that Matter in the clearest Light, and to demonstrate, that it was impossible in the Nature of the Thing, that what these Historians write could be true; it will be necessary, in the first Place, that I trace back the Genealogy of the above named Competitors to *David* Earl of *Huntington*, of whom both of them were descended, and upon that Descent founded their Claims. And then (as that of the *Bruce* is very well known) I shall deduce the Posterity of the *Baliol*, as far as shall be

be sufficient to determine the Point; comprehending the whole in the following Articles.

1. This *David Earl of Huntington* had three Sons, *Henry, David* and *John*, (who all died without Issue) and four Daughters; 1. *Margaret* married to *Alan Lord of Galloway*, and who was Grandmother to *John Baliol* the Competitor; 2. *Isabel*, married to *Robert Bruce*, surnamed *the Noble*, and Mother by him to *Robert Bruce*, Lord of *Annandale*, the Competitor; 3. *Matilda*, who had no Children; and 4. *Ada*, married to *Henry Hastings* Lord *Abergavenny*, and Grandmother to *John Hastings*, who was also a Competitor, not for the whole, but for a third Part of the Kingdom; supposing, that (as King *Edward of England* would have it to be a Fief holding of that Crown) it was divisible, as private Heritages then commonly were among Heiresses.

2. Of these four Daughters of *David Earl of Huntington*, we need only to speak of the first, *Margaret*, married, as is said, to *Alan Lord of Galloway*: For *Robert Bruce* the Competitor was incontrovertibly the Son and Heir of the second.

3. This *Alan Lord of Galloway*, before his Marriage with *Margaret*, Daughter of *David Earl of Huntington*, had another Wife. What was her Name, or of what Family she was descended, I have not yet been able to learn. This however is certain, that by her he had a Daughter, named *Helen*, married to *Roger de Quincy* Earl of *Winchester*, who was in her Right some time High Constable of *Scotland* (a). Their Progeny is at large described by Sir *William Dugdale*, in his *Baronage of England*, Vol. I. p. 685 and 689. But with them (by what I have said, and by what will appear more fully afterwards) we have no Concern in the present Question.

4. That *Helen* the Wife of *Roger de Quincy*, must have been Daughter to *Alan Lord of Galloway*, by a former

(a) *Roland*, the Father of *Alan Lord of Galloway*, had married *Elizabeth Moreville*, Daughter of *Richard Moreville* High Constable of *Scotland*, who after the Death of her Brother *William Moreville*, who had no Heirs, brought that hereditary Dignity to the Family of *Galloway*.

former Wife, and not by *Margaret* the Daughter of *David* Earl of *Huntington*, is evident from this, that in a Charter of her's, in a Register-book of the See of *Glasgow*, she expressly designs herself, PRIMOGENITA ALANI DE GALWEYA CONSTABULARII SCOTIÆ. But had she been so by *Margaret David* Earl of *Huntington*'s Daughter, her Posterity, to be sure, would have claimed the Crown of *Scotland*, preferably to *John Baliol*. But that they neither had, nor pretended to have any Right to it, appears not only from *Dugdale*, but also from *John Baliol*'s Claim or Petition, in *Rymer's Fœdera Angliæ*, Vol. II. p. 579. in which tho' his Mother *Dervegild*'s Brother *Thomas*, and her elder Sister *Christian*, (who both died without Issue) are mentioned; yet this *Helen*, the eldest of all the Sisters, is not so much as once spoken of.

5. Come we then to the other two Daughters of *Alan* Lord of *Galloway*, by *Margaret* Daughter of *David* Earl of *Huntington*. They were, as I said, *Christian* and *Dervegild*. The former was married to *William de Fortibus*, Son to *William de Fortibus* Earl of *Albemarle* in *England*. They both died without Issue, and he (according to *Dugdale*) anno 1246. The other *Dervegild*, was Wife to *John Baliol*, and Mother of *John Baliol* the Competitor, who was by the Arbitration of *Edward I.* declared King of *Scotland*.

6. That *Alan* Lord of *Galloway* left no more Daughters than three, viz. *Helen* by his first Wife, and *Christian* and *Dervegild* by the second, (as I have said above) appears by a Charter of *John Baliol senior*, the Husband of *Dervegild*, in the above cited Register of *Glasgow*, in which *Roger de Quincy*, *William de Fortibus* and himself, are named, as having Right to the Estate and Lands of *Alan* Lord of *Galloway*, (who died in the Year 1233) as Husbands to his three Daughters and Coheirs, *Helen*, *Christian* and *Dervegild*. The Right therefore that *John Baliol junior* pretended to have to the Crown, proceeded from his Mother *Dervegild*, the third and youngest Daughter of *Alan* Lord of *Galloway*,

P

Helen

Helen, the eldest having (as I said) no Pretensions, and the next elder *Christian* having died without Issue.

7. *John Baliol* the King had only one Son *Edward Baliol*, who died without Issue anno 1303, after having made a Surrender of the Crown to *Edward III.* of *England*, anno 1355, sixteen Years before *Robert II.* and first of the *Stewarts*, came to the Throne.

8. *Andrew Winton* Prior of *Lochleven*, who flourished in the Year 1412, in his Verse Chronicle MS. tells us, that *Alan* Lord of *Galloway* had a Daughter, called *Marjory*, a younger Sister, as he will have it, of *Dervegild*, and who was married to *John Cumin* Lord of *Badenach*. With him agrees *Hume* in his History of the *Douglasses*, who names her *Mary* (a). But that they are both mistaken appears from what is said above, Article 6. (b).

9. But *John Fordon*, our oldest Historian, is in the Right, who makes this *Marjory* the Daughter and not the

(a) 'Tis strange to observe the unaccountable Inadvertency Mr. *Hume*, in his History of the Family of *Douglas*, Fol. Edit. p. 86. is guilty of, in which however he is blindly followed by Mr. *Logan*, in his first Treatise, p. 5. and the Author of the Paper in the *Scots Magazine*, August 1747, p. 369. Mr. *Hume*, I say, in stating the Propinquity in which *William* the first Earl of *Douglas* stood to *David* Earl of *Huntington*, and comparing it with that of our *Robert II.* makes this last to be five Degrees, and the former only four Degrees removed from him; whereas he is wrong in both. The Way he reckons their Genealogy is thus: From *David* Earl of *Huntington*, his Daughter, 1. *Margaret*; 2. Her Daughter *Mary*; 3. *Mary's* Daughter; 4. This *William* Earl of *Douglas* is the fourth Person. On the other Side, From this *David* Earl of *Huntington* his Daughter, 1. *Isabel*; 2. *Robert Bruce*; 3. His Son King *Robert*; 4. His Daughter *Marjory*; 5. Her Son *Robert Stewart* is the fifth Person. But their true Genealogy should, upon Supposition that this Earl of *Douglas* was really descended of *David* Earl of *Huntington*, run thus: From *David* Earl of *Huntington*, 1. *Margaret*; 2. *Dervegild*; 3. *Marjory*; 4. *John Cumin*; 5. *Dornagilla*; (so *Hume* calls her) 6. *William* Earl of *Douglas*. Again from *David* Earl of *Huntington*, 1. *Isabel*; 2. *Robert Bruce* Lord of *Annandale*; 3. *Robert Bruce* Earl of *Carrick*; 4. *Robert Bruce* King; 5. *Marjory*; 6. *Robert Stewart* King. By which 'tis plain, that tho' *William* Earl of *Douglas* had been the Grandson of *John Cumin*, which he was not, both he and *Robert Stewart* would have been equally, i. e. six Degrees removed from *David* Earl of *Huntington*.

(b) *And. Winton*, in another Place, makes this *Marjory* the Daughter, and not the Sister of *Dervegild*.

the Sister of *Dervegild*, (which is also confirmed by the Chartulary of *Aberbrothack*;) and writes, that she was married to *John Cumin Senior*, Lord of *Badenach*, and that by him she was Mother to *John Cumin* Lord of *Badenach junior*, commonly nicknamed *the Red Cumin*, who was slain by King *Robert Bruce* in the Church of *Drumfries*, in February 1306. Thus far my Antagonists and I are pretty near agreed; but immediately after we separate, and take very different Roads. For,

10. They, in order to connect the Family of the *Cumins* with that of the *Douglasses*, and following *David Hume* in his History of that last Family, and others, give out that *John the Red Cumin*, Son of *Marjory Baliol*, had a Daughter, whom *Hume* calls *Dornagilla*, who was married to *Archibald* Lord of *Galloway*, who commanded the *Scots* Army, and was killed at the fatal Battle of *Halidonhill*, anno 1333. And of this Marriage, say they, was begotten *William*, afterwards created Earl of *Douglas*, who is said to have (as next Heir of the *Baliol* Family) put in his Claim to the Crown, anno 1371. But if I prove, that this Earl of *Douglas* is not descended of that Branch of the *Cumin* Family, and that their Genealogy did run in a quite different Channel, then it will manifestly follow, that whatever Pretensions that *John the Red Cumin*, or his Posterity, might make to the Crown, as descended from King *John Baliol's* Sister *Marjory*; yet this *William* Earl of *Douglas*, having no Relation to any of them, could make none. And this is what I am now to do in this Appendix, in which I shall bring such Evidence for what I say, as no rational Man can justly call in question. This being a Matter of Fact, and consequently only probable by the Testimony of those Authors that write of it, I shall produce three *English* and one *Scots* Author, who give us the Genealogy of that last *John Cumin*, Lord of *Badenach*, and the three former confirm it from the publick Records, and other Documents of that Kingdom. From all which it will appear, that the Claim alledged to be given in to the Crown of *Scotland*, by *William* the first Earl of *Douglas*, is without any Manner of Foundation.

11. I begin with Sir *William Dugdale*, the most learned, the most accurate, and most faithful Genealogist, that his Nation, or I believe any other, ever produced. He, in his *Baronage of England*, Vol. *II.* p. 683. informs us, that *John Cumin junior*, Lord of *Badenach*, who was killed, as I said, by King *Robert Bruce*, had one Son and two Daughters. The Son, named also *John*, married *Joanne*, one of the Sisters and Coheirs of *Audomare de Valence*, Earl of *Pembroke*. He died without Issue, 19th *Edward II.* i. e. anno 1325 or 1326.

12. *Joanne* his eldest Sister, was married to *David de Strabolgy*, Earl of *Athole* in Scotland, and Lord *Chilham* in England, who died 20th *Edward II.* [*Dugdale, ibid.* p. 96.] leaving by her a Son *David*, who succeeded his Uncle *John*, [the Son of the *Red Cumin*] whence it is that in most of our Histories he is called *David Cumin*, tho' in *Rymer's Fædera*, and in other Records, he is constantly named *David de Strabolgy*. He was slain by the Scots in the Battle of *Kilblain*, 9th *Edward III.* i. e. anno 1335, leaving by *Catharine Beaumont*, Daughter of *Henry Lord Beaumont*, a Son named also *David*. [*Dugdale, ibid.*]

13. This last *David de Strabolgy*, died in October, 29th *Edward III.* i. e. anno 1376, leaving by *Elisabeth Ferrers* his Wife, two Daughters, *Elisabeth* and *Philippa*, both then Minors, but married afterwards to two Brothers, Sir *Thomas* and Sir *Ralph Percies*, Sons of *Henry Lord Percy*. And both of them surviving their Husbands, were again married, *Elisabeth* to Sir *John Scrope*, and *Philippa* to Sir *John Halsbam*: But whether they had any Children to their first or second Husbands, *Dugdale* does not inform us (a).

14. *Elisabeth*, the second Sister of *John Cumin* (Son to the *Red Cumin*) was married to *Richard Talbot*, of whom are sprung a numerous Progeny, increasing to this

(a) *Augustine Vincent* says only in general, that *Elisabeth*, married to Sir *Thomas Percy*, had Issue. But of *Philippa* her Sister, who had for her second Husband Sir *John Halsbam*, (*Hasbame* he calls him) he says, that she was by him Mother of *Richard*, who was Father to *Johanne*, Wife to *John Leuchnor Knight*,

this Day. *Dugdale* brings them as far down as the Year 1673.

15. With *Dugdale* in the main (and so far as answers our Purpose) agree two other *English* Writers, viz. *Ralph Brooke* and *Augustine Vincent*, the one *York Herald*, and the other *Rouge Croix*, Pursevant at Arms, in their Catalogue of the *English* Nobility. The latter of these has a long Squabble with the former, and Sir *James Balfour* (in his Catalogue of the *Scottish* Nobility) with both. *Vincent* blames *Brooke* for making only three *Dauids de Strabolgy*, and thereby attributing some Things to the second, which belonged to the third; whereas, according to him, there were four *Dauids de Strabolgy*, the Father of him who married the Daughter of the *Red Cumin*, being the first. Sir *James Balfour* quarrels them both for giving the Sirname of *Strabolgy* to these *Dauids*; whereas, as he contends, their real Sirname was *Cumin*. But that he is much mistaken, I have shewed in my Note on *Buchanan*, p. 429. Col. 2. and I have seen other Documents vouching the same. Both these *English* Writers however agree, that *Joanne Cumin* (eldest Daughter, and after the Death of her Brother *John*, the Son of the *Red Cumin* Coheir with her youngest Sister *Elisabeth*) was married to *David de Strabolgy*, Earl of *Athole*, and deduce her Genealogy as above, down to her two Great Grand-daughters *Elisabeth* and *Philippa*.

16. And here it happens luckily for me, and brings the Point I am upon to a full Demonstration, that *Augustine Vincent*, in order to confute what is said by *Ralph Brooke*, gives us the very Words of an Inquest, that was called to determine the Right that these two Sisters had to some Lands in the County of *York*, which some time belonged to *Mary* Countess of *Pembroke*, and by Reversion after her Death were to come to them. The Words are, *Juratores dicunt, super sacramentum suum, quod Maria de Sto. Paulo nuper Comitissa Pembrochiæ tenuit in dotem, ex donatione Audomari de Valentia Comitissæ Pembrochiæ, nuper viri sui, terras in Comitatu Eboracensi, reversione inde spectante, post mortem præfatæ Comitissæ, Elisabethæ uxori Thomæ Percey Chevalier,*

valier, & Philippæ uxori Radolphi Parrey Chevalier, filii David de Strathbolgie, nuper Comitis Atholl, filii David, filii David & Johanne Cumyn uxoris sue.

17. Tho' these Words, and what I have said above, may seem to render it superfluous, I shall subjoin what Fordon, our oldest and best Historian, writes on that Subject, who (except that he gives no Son, and only one Daughter to John the Red Cumyn) in every Thing else agrees with these English Authors. His Words, Vol. IV. p. 260. are, Etiam supradictus Johannes de Balliola genuit unam filiam, nomine Mariam, sororem sciz. Johannis Regis supradicti. Hæc nupsit Johanni Cumyne, de qua idem Johannes Cumyne genuit unum filium, nomine Johannem, quem Robertus de Bruyse, qui postea fuit Rex, apud Drumfresse interfecit. Iste Johannes Cumyne genuit unam filiam tantum, quæ nupsit David Comiti Athollæ, de qua idem David genuit plures filios, quorum primus & senior duxit in uxorem filiam Henrici de Bellomonte, quam quidem idem Henricus genuit ex filia primogenita, & una de heredibus Johannis Comitis de Buchane; de qua idem David genuit unum filium nomine David.

18. These Things being settled upon incontestable Evidence, and it appearing from them, that David de Strathbolgie, the last Earl of Atholl of that Sirname, who was Great Grandson or Representative of the Red Cumyn, lived to the Year 1376, (which was five Years after the Accession of our Robert II.) and that his two Daughters and Coheirs lived many Years after, whose Posterity, for ought I know, may remain in England to this Day, From these Things I say, it demonstratively follows, that as William the first Earl of Douglas was not at all descended of John the Red Cumyn, Lord of Badenach, and could not therefore through him derive Right from the Balliols, it was impossible in the Nature of the Thing, that he could give in any Claim to the Crown, when Robert II. mounted the Throne: And consequently, that what our later Historians, and my Antagonists from them, relate of that Matter, is absolutely fictitious, and without any Foundation at all. Q. E. D.

19. I might, if there was any Need for it, add some other Considerations, which render the Thing infinitely improbable. As 1st, That it cannot be thought that the chief of that Family, which had so gloriously supported the Cause of King *Robert I.* and afterwards that of his Son *David II.* against *Edward Baliol*, as he himself had always done till then, would all of a sudden set up a Claim to the Crown, as deriving Right to it from the *Baliols*, against the true Heir of the *Brucean* Family.

And 2^{dly}, It is very remarkable, and tends much to destroy such a Supposition, that when King *David* did in the Year 1363, propose to his People, that failing Heirs of his own Body, the Crown should go to *Edward III.* of *England*, and his Heirs; and that tho' the Conditions offered by that King, to induce them to close with that Proposal, were vastly advantageous; yet the Nobility and others, were so universally offended at it, that they entred into a Confederacy against it; and were upon the Point of rebelling against King *David*, if he should further insist upon it. This so terrified that King, that he soon dropt the Proposal, and did not think himself safe, till he had got his Nobility and others to annul the Confederacy they had entered into; and in a most solemn Deed, under their Oaths and Seals, to renew their Allegiance and Fidelity to him. The chief Person that was at the Head of that Confederacy, was *Robert* Great Steward of *Scotland*, the next Heir to the Crown, who had entred into a firm Bond of Alliance for supporting his Right, with *George* Earl of *March*, and this same *William* Earl of *Douglas*, and a great many others. And is it to be thought, that he who so strenuously stood up for *Robert Stewart's* Right, would within less than eight Years after, strike out against it, and set up for himself? This new Bond of Allegiance given by *Robert* Steward of *Scotland* to that King *David*, in which this *William* Earl of *Douglas* is particularly named, as one of the chief Men of his Party,

is so singular, that I have given it a Place at the Foot of the Page (4).

And

(a) Ex Jo. Fordoni Scotichron. lib. 14. cap. 27.

De renovatione fidelitatis Regi præstita, & de forma juramenti.

At sibi Rex præcavens in futurum, eodem anno, apud Inchemurdach, convocatis omnibus regni optimatibus, novam ab eis fidelitatem exegit xiiii die mensis Maii; et propter aliorum exemplum nepotem suum primo, deinde reliquos jurare fecit, hujusmodi sub tenore:

Cunctis pateat evidenter, quod ego Robertus Senescallus Scotiae, Comes de Strathern, xiiii die mensis Maii, anno Domini M ccc lxiij, apud Inchemurdach, in praesentia venerabilium in Christo patrum, Dominorum Dei gratia, Willelmi Episcopi Sancti Andreae, Patricii Episcopi Brechinensis, Cancellarii Scotiae, Johannis Abbatis de Dunferm. Magistri Walteri de Wardlaw Archidiaconi Laudoniae, Domini nostri Regis Secretarii, Magistri Gilberti Armesstrang Praepositi Sancti Andreae, Dominorum Roberti de Erskyn Camerarii Scotiae, Archiepiscopi de Douglas, Roberti de Ramsay, Thome de Fawside, Militum; Normani de Lesley, Alexandri de Lyndesey, & plurium aliorum, corporale super sancta Dei Evangelia praestiti juramentum, quod fidelis ero, pro toto tempore vitae meae, Domino meo Domino David, Dei gratia, Regi Scotorum illustri, in omnibus causis, motis seu movendis, ipsum Dominum meum, & suos ministros ac fideles quoscumque, viz. quos ipse Dominus meus Rex suos fideles dicere voluerit & vocare, pro totis viribus meis, contra omnes viventes, cujuscunque conditionis seu status extiterint, jurabo, defendam, manutenebo & sustinebo, non obstantibus quibuscunque obligationibus, ligamentis vel juramentis per me factis & exhibitis Patricio Comiti Marchiae & Moraviae, Willelmo Comiti de Douglas, Johanni Senescallo de Kyle, Roberto Senescallo de Menteth, filiis meis, seu quibuscunque aliis, expressè & omnino renunciavi, & imperpetuum renuncio per praesentes, obligans me & promittens, per juramentum meum praedictum, quod de cetero, nullam obligationem, ligamentum vel juramentum, cum ipsis aut ipsorum aliquo, aut cum quocunque aut quibuscunque faciam, nisi prius fecero scire dictum Dominum meum Regem, et ipsius licentiam & voluntatem super hac petiero & optinero specialem; nec contra dictum Dominum meum Regem vel ipsius ministrorum, seu fidelium, aliquem, consilium, auxilium, favorem vel defensionem, clam vel palam, cuicunque vel quibuscunque impendam; sed quando-cunque & quotienscunque scivero vel audiero aliquos contra dictum Dominum meum Regem rebelles existere, aut sibi obtemperare nolle, ipsos pro totis viribus meis & potentia compefcam, puniam, refrenabo, & usque ad condignam satisfactionem, ad voluntatem dicti Domini mei Regis, distringam & compellam. Et ad haec omnia & singula praemissa firmiter & inviolabiliter facienda, perimplenda ac observanda, obligavi me, & obligo per praesentes, sub pena exheredationis omnium terrarum mearum, reddituum & possessionum, ac sub pena amissionis omnis juris successionis regni Scotiae, & quorumcunque aliorum dominiorum seu terrarum, quae mihi competit quocunque jure, titulo vel ordinatione, vel contingere poterit in futurum, sine ulla spe gratiae vel favoris optinendi, & sub pena per-jurii,

And *lastly*, what shews the Thing to be very incredible is, that we hear nothing from these our Historians of this Earl *William's* Pretensions, till I may say the very Day on which this *Robert* was to be crowned, i. e. the 25. of *March* 1371, just a Month after the Death of King *David*; and that yet he, the same Earl *William*, is among the first of these, who in the solemn Act of Parliament past two Days after, recognizes King *Robert II.'s* Title, and that of his Son *John* to be his true Heir and Successor.

But why should I dwell upon these Topicks, when I have so evidently shewed above, that whatever Pretensions the Descendents of *Dervegild*, or of her Son *John Baliol*, or even of the *Cumins*; as representing them, could make to the Crown, yet the Family of *Douglas*, which had not the least Connection with any of them, can make none? To conclude, if we are to seek for the Heirs and Representatives of King *John Baliol*, we are not to look for them in *Scotland*, but among the *Percies*, *Scropes*, *Halshams* or *Talbots*, &c. in our neighbouring Kingdom: Some one or other of whom (tho' it will be very difficult to point out the true Person after so many Generations) yet I make no Doubt are truly descended of *Marjory Baliol*, King *John's* Sister. But should they be able to prove their Propinquity, I do not believe that any of them will be so foolish as to pretend Right to the Crown of *Scotland*, especially as I have (I think) fairly proved, that he from whom they would derive it, had originally no Right to it himself.

I have only one Thing more to add, which is to shew how ignorant, at least inconsiderate, one of the Authors I have to do with is, who in his Paper in the *Scots Magazine*, November 1747, p. 528, says, that the present Duke of *Douglas* is the Representative of *John Baliol*. But here he is doubly mistaken, 1st, In this, that the present Duke of *Douglas* is not the true lineal

Q

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jurii, debonerationis, reprobationis & defectionis Militis & armorum. In cuius rei testimonium, presentibus sigillum meum est appensum, anno, die & loco supradictis. Sub isto tenore iuraverunt ceteri, mutatis tantum certis terminis, prout personarum qualitas exposulavit.

Representative of the old Earls of *Douglas*, but is sprung from an ancient Branch of it, viz. the Earls of *Angus*, the first of which, of that Name, was the third Son of this *William* first Earl of *Douglas*, named *George*, who from his Mother, Heiress of that Earldom, acquired that Title. From that Time to the Forfeiture of *James* the ninth Earl of *Douglas*, who died without Issue, anno 1488, the Right to the Crown (if it ever was in it, as these Authors pretend) must have continued in that Family till then. But tho' all the Male-issue of it was extinct with that last Earl, yet, as it is generally thought, that the Right to a Crown cannot be forfeited, and that Females by our Constitution are not quite excluded from the Succession, the Earls of *Angus*, who made up only the second Branch of that illustrious Family, could never acquire any Right to the Crown, so long as there remained any Females, or their Posterity of the first and oldest Branch of it, who were therefore nearer by Proximity of Blood to it than they. Several of these are mentioned by our Genealogists, as *Elizabeth* Daughter to *Archibald* fourth Earl of *Douglas*, married to *William* Earl of *Orkney*, of whom is descended the present Lord *Sinclair*. And *Beatrice* Daughter to *Archibald* fifth Earl of *Douglas*, who, say they, had by her third Husband, *John Stewart* of *Lorn*, a Daughter, who was married to the Earl of *Errol*. They speak of several other Daughters of that Family, who were married into considerable Families: But as they do not agree among themselves, and that the Matter is of no Importance to what we are upon, I pass them over.

But 2^{dly}, Supposing that the whole Race of the old Earls of *Douglas*, Male and Female, were extinct, and that the Right which *William* the first Earl is said to have pretended to have to the Crown, had fallen to the Posterity of his Son *George* first Earl of *Angus* of that Name; as little is it true, that the present Duke of *Douglas* is the true lineal Heir and Representative of that Family. For *Archibald* the seventh Earl of *Angus* leaving no Male-issue, the Honours came by Resignation to *David Douglas* of *Pittendrich*, his Nephew, whose Son

Archibald

Archibald the ninth Earl of *Angus*, dying without Issue, the Title was transferred to *William* the tenth Earl, Grandson of Sir *William Douglas* of *Braidwood*, who was Son to *Archibald* the sixth Earl, commonly called *Bell the Cat*, of whom in a direct Line is the present Duke of *Douglas* descended. But the true lineal Heir of the above *Archibald* seventh Earl of *Angus* was our King *James VI.* and all of the *Stewart* Family ever since. For that Earl *Archibald* was married to *Margaret* Daughter of *Henry VII.* of *England*, and Dowager of *James IV.* of *Scotland*, and by her had one only Daughter Lady *Margaret Douglas*, married to *Matthew* Earl of *Lennox*, and by him Mother of *Henry* Lord *Darnley*, Father of our King *James VI.* who by the Failure of all the Issue of *Henry VIII.* of *England*, acquired a double Title to the Crown of that Kingdom, 1st, from his Grandfather *James V.* of *Scotland*, and 2^{dly}, from his Grandmother Lady *Margaret Douglas*, Countess of *Lennox*, the one the Son, the other the Daughter of the aforesaid Queen *Margaret*. Thus, if the Right to the Crown of *Scotland* had belonged to the *Baliols*, and had from them descended to the Earls of *Angus*, it would have terminated in the *Stewart* Family. But, as I have in my Dissertation shewed, that their Title was much better founded, viz. by their being descended of the *Brucean* Family, whose Right was many Ways preferable to that of the *Baliols*; so in this Appendix I have demonstrated, that whatever Right the *Baliols* can be supposed to have had, yet it never was nor could be transmitted to any Branch of the Family of *Douglas*.

F I N I S.

E R R A T A.

P Age 5. line 22, before hope add I. p. 11. l. 9. for to r. of. p. 35. l. 19. for on r. in. p. 47. l. 7. after fit, add a (i). p. 56. l. 4. for shall r. still. p. 81. l. 33. for these r. those. *ibid.* l. 37. for are r. is. p. 119. l. 11. r. *Mariotiam*.

any Branch of the Family of Douglas.
 have had, yet it never was nor could be ascribed to
 of the Family; so in this Appendix I have demonstrated
 Family; which Right was many Ways preferable to that
 founded, viz. by their being descended of the Brecken
 Distinction showed, that their Title was much better
 rated in the Stewart Family, than as I have in my
 descended to the Family of Stuart, it would have seem'd
 have had belong'd to the Family of Stuart, and had more than
 the Son, the other the Daughter of the said Queen
 Lady Stuart, Countess of Arundel, the one
 James V. of Scotland, and so from the Grandmother
 Crown of that Kingdom, from his Grandfather
 Henry VIII. of England, acquired a double Title to the
 King James VI. who by the Failure of all the Issue of
 and by him Mother of Henry Lord Darnley, Father of our
 Margaret Douglas, married to Matthew Earl of Lennox,
 of Scotland, and by her had our only Daughter Lady
 James VI. and all of the Stewart Family ever since.
 For that Earl of Arundel was married to Margaret Daugh
 ter of Henry VII. of England, and Dowager of James IV.
 of Scotland, and by her had our only Daughter Lady
 Margaret Douglas, married to Matthew Earl of Lennox,
 and by him Mother of Henry Lord Darnley, Father of our
 King James VI. who by the Failure of all the Issue of
 Henry VIII. of England, acquired a double Title to the
 Crown of that Kingdom, from his Grandfather
 James V. of Scotland, and so from the Grandmother
 Lady Stuart, Countess of Arundel, the one
 the Son, the other the Daughter of the said Queen
 Margaret. This will shew, that the Family of Stuart
 have had belong'd to the Family of Stuart, and had more than
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 rated in the Stewart Family, than as I have in my
 Distinction showed, that their Title was much better
 founded, viz. by their being descended of the Brecken
 Family; which Right was many Ways preferable to that
 of the Family; so in this Appendix I have demonstrat
 ed, that where Right the Family can be ascribed to
 have had, yet it never was nor could be ascribed to
 any Branch of the Family of Douglas.



TYWIS

ERRATA

Page 1. line 22. before hope add. A. 11. 10. for 10. 11. 12.
 Page 2. line 1. for 10. 11. 12. add. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.